

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2017

CORAM:

THE HONOURABLE Dr. JUSTICE S.VIMALA

C.M.A.No.370 of 2017

and C.M.P.No.2592 of 2017

Metropolitan Transport Corporation
(Chennai Division-I) Limited,
Rep. by its Managing Director,
Pallavan Salai, Chennai. ... Appellant/Respondent

versus

R.Tamilselvan ... Respondent/Petitioner

Prayer : This Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 07.07.2014 made in M.C.O.P.No.3834 of 2011 on the file of the Motor Accident Claims Tribunal (V Court of Small Causes), Chennai.

For Appellant : Mr.S.Sivakumar
For Respondent : Mr.A.N.Viswanatha Rao

JUDGMENT

The claimant R.Tamilselvan, aged about 27 years, employed as a Setting Worker (at PEPSI, CINE & TV Production, Assistant Union, Vadapalani, Chennai), earning a sum of Rs.15,000/- per month, met with an accident on 30.06.2011 and sustained injuries. Thus, he filed a claim petition in M.C.O.P.No.3834 of 2011 before the Motor Accident Claims Tribunal (V Court of Small Causes), Chennai, claiming compensation of Rs.7,00,000/-.

1.1. As against the claim made, the Tribunal has awarded a sum of Rs.6,89,000/-, which is payable by the Transport Corporation, along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit. The break-up details of the compensation read as under:

Loss of income for six months (Rs.6500 x 6)	-	Rs.	39,000/-
Transportation	-	Rs.	5,000/-
Extra nourishment	-	Rs.	50,000/-
Damage to clothes and articles	-	Rs.	500/-
Attender charges	-	Rs.	10,000/-
Medical expenses	-	Rs.	13,000/-
Future medical expenses	-	Rs.	60,000/-
Compensation for disfigurement	-	Rs.	5,000/-
Pain and suffering	-	Rs.	50,000/-
Disability of 50% at the rate of Rs.2,000/- per percentage	-	Rs.	1,00,000/-
Loss of amenities	-	Rs.	25,000/-
Loss of earning capacity (Rs.6500 x 12 x 17 x 25%)	-	Rs.	3,31,500/-
Total	-	Rs.	6,89,000/-

3. Mainly challenging the finding on the quantum of compensation, the appeal has been argued before this Court.

4. It is necessary to look into the award passed by the Tribunal with regard to heads under which quantum of compensation has been awarded.

5. Ex.P2-case sheet shows that the claimant sustained segmental fracture of shaft of left humerus and he was treated as in-patient from 02.07.2011 to 09.07.2011 and thereafter, he took treatment at Sri Ramachandra Hospital as inpatient from 01.08.2011 to 22.08.2011 and he underwent a surgery, thereby, open reduction internal fixation with plate osteosynthesis left humerus was done. Due to the injury sustained, the claimant is not able to carry out the day to-day work.

5.1. P.W.2-Doctor, who treated the claimant, has stated in his evidence that the claimant sustained fracture over the left hand, thereby, there is a pain and tightness; iron rods were inserted during the surgery; there is restriction of movement of left hand; there is a loss of power in holding heavy weight goods; therefore, the disability is assessed at 50%. The doctor further stated that the iron rods, which were inserted, should be removed by another surgery.

5.2. Considering the same, the Tribunal has taken the disability at 50% and awarded the compensation at the rate of Rs.2000/- per percentage of disability, i.e. Rs.1,00,000/-.

5.3. The claimant has suffered segmental fracture of shaft of leg humerus. A humerus fracture is a bone fracture of the

bone of the upper arm, the humerus. Fractures of the humerus may be classified by the location of the fracture and divided into fractures of the proximal region, which is near the shoulder, the middle region, which is the shaft of the humerus, and the distal region, which is near the elbow. He has been as in-patient for 22 days at Ramachandra Medical College Hospital and one week at Government General Hospital. The treatment method was by Osteosynthesis. Osteosynthesis is the reduction and internal fixation of a bone fracture with implantable devices that are usually made of metal. It is a surgical procedure with an open or per cutaneous approach to the fractured bone. Osteosynthesis aims to bring the fractured bone ends together and immobilize the fracture site while healing takes place. In a fracture that is rigidly immobilized the fracture heals by the process of intramembranous ossification. Considering the nature of treatment and nature of sufferings one can conclude that the injury sustained would affect the earning capacity. Therefore, the Tribunal has awarded the compensation of Rs.3,31,500/- on account of loss of earning capacity, by taking the monthly income of the injured as Rs.6,500/- p.m., as per the decision of the Apex Court in the case of Syed Sadiq and others. Hence, it cannot be said to be excessive.

5.4. The claimant in his evidence stated that due to the surgery, his left hand appears disfigured. In view of that, the Tribunal has awarded a sum of Rs.5,000/- towards disfigurement, which is reasonable.

5.5. The Doctor has stated in his evidence that iron rods, which have been inserted during the surgery, should be removed. Hence, the claimant should spend more money in future. Therefore, the award of Rs.60,000/- towards future medical expenses is correct and reasonable.

5.6. Due to the injuries sustained by the claimant, the claimant was not able to go for work for six months. Hence, the award of Rs.39,000/- (Rs.6500/- x 6) towards loss of income is correct and reasonable.

5.7. Having regard to the age, nature of injuries and period of treatment, the Tribunal has also awarded Rs.5,000/- towards transportation; Rs.50,000/- towards extra nourishment; Rs.500/- towards damage to clothes and articles; Rs.10,000/- towards attender charges; Rs.13,000/- towards medical expenses as per the bills (Ex.P5); Rs.50,000/- towards pain and sufferings; Rs.25,000/- towards loss of amenities, which are very reasonable and it cannot be said to be excessive.

5.8. It may appear to be duplication of award under the head of loss of earning capacity as well as disablement compensation. The award under these heads would overlap certain heads, even

though it is permissible to grant the same. The award under the head of disablement compensation has to be distributed between loss of amenities and medical expenses, which are found to be grossly inadequate.

6. In the result, the Civil Miscellaneous Appeal is dismissed, confirming the award dated 07.07.2014 passed in M.C.O.P.No.3834 of 2011 by the Motor Accident Claims Tribunal (V Court of Small Causes), Chennai.

7. The Transport Corporation is directed to deposit the entire amount of compensation along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this Judgment. On such deposit, the claimant is permitted to withdraw the same. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal
(V Court of Small Causes),
Chennai.

2. The Section Officer,
V.R.Section,
Madras High Court, Chennai.

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C.M.A.No.370 of 2017

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