

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2017

CORAM:

THE HONOURABLE Dr. JUSTICE S.VIMALA

C.M.A.No.442 of 2017
and C.M.P.No.2966 of 2017

Metropolitan Transport Corporation Ltd.,
Rep. by its Managing Director,
No.2, Pallavan Salai,
Chennai – 600 002. ...
Respondent/Appellant

versus

M.Balu ... Petitioner/Respondent

Prayer : This Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the fair and decretal order dated 06.01.2009 passed in M.C.O.P.No.371 of 2005 by the learned Additional District Judge, Fast Track Court-IV, Motor Accident Claims Tribunal, Ponneri.

For Appellant : Mr.S.S.Swaminathan

JUDGMENT

The claimant, Balu, aged about 30 years, doing fishing and earning a sum of Rs.5,000/- per month, met with an accident on 19.02.2005, due to which, he suffered head injuries and he was taking treatment in the Government Hospital at Chennai from 19.02.2005 to 22.02.2005 and later, he took treatment in the

private hospital.

1.1. He filed a claim petition before the Motor Accident Claims Tribunal (Additional District Judge, Fast Track Court-IV), Ponneri, claiming compensation of Rs.1,00,000/-.

1.2. As against the claim made, the Tribunal has awarded a sum of Rs.40,000/- as compensation, payable with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit.

1.3. Contending that the amount awarded by the Tribunal is excessive, the Transport Corporation has filed this appeal.

2. A perusal of the award passed by the claims Tribunal would go to show that the age of the injured has been taken as 30 years based on the AR copy; and monthly income has been taken at Rs.2,700/- p.m.; the disablement has been taken as 20%; the Tribunal has quantified the compensation under the following break-up details:

Loss of income	-	Rs. 1,000/-
Transport Expenses	-	Rs. 1,000/-
Extra nourishment	-	Rs. 3,000/-
Pain and sufferings	-	Rs.10,000/-
Loss of earning capacity	-	Rs.25,000/-
Total	-	<u>Rs.40,000/-</u>

3. The main contention of the learned counsel for the appellant is that the percentage of the disability fixed by the doctor is excessive and thus the award on loss of earning capacity has become excessive.

3.1. According to the evidence, the claimant was suffering from head ache, giddiness, shivering in the hands, inability to carry the weight over the head and therefore, there is loss of earning capacity. Even though the doctor has certified the disability at 25%, the tribunal has taken the disability at only 20%. The disablement compensation would be awarded at the rate of Rs.1000/- per percentage. In this case, Rs.20,000/- on the account of disablement compensation leading to loss of earning capacity would be reasonable. The remaining amount of Rs.5,000/- under the same head could be shifted to the head of medical expenses and loss of enjoyment of amenities which has not been awarded at all. Hence, the amount awarded is reasonable and not excessive.

3.2. From the award passed, it is clear that the compensation awarded by the Tribunal cannot be said to be excessive, having regard to the nature of the injury, period of treatment and impact of the disability upon his earning capacity and therefore, the award is reasonable.

4. In the result, the Civil Miscellaneous Appeal is dismissed, confirming the award dated 06.01.2009 passed in M.C.O.P.No.371 of 2005 by the Motor Accident Claims Tribunal (Additional District Judge, Fast Track Court-IV), Ponneri.

5. The appellant Transport Corporation is directed to deposit the award amount 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 four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the claimant is permitted to withdraw the amount. No costs. Consequently, connected miscellaneous petition is closed.

31.01.2017

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To

1. The Motor Accident Claims Tribunal
(Additional District Judge, Fast Track Court-IV),
Ponneri.

Dr.S.VIMALA, J.

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