

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.01.2017

CORAM

THE HONOURABLE Dr. JUSTICE. S.VIMALA

C.M.A.No.3500 of 2014

The Managing Director,
Tamil Nadu Transport Corporation Ltd.,
37, Mettupalayam Road,
Coimbatore.

... Appellant/2nd respondent

versus

1. Ovan ...1st respondent/claimant
2. Krishnan ...2nd respondent/1st respondent
(R2 remained ex parte before
the Tribunal)

Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the Judgment and Decree dated 31.08.2012 made in M.C.O.P.No.1448 of 2008 on the file of the Motor Accident Claims Tribunal (2nd Additional District Judge), Tirupur.

For Appellant : Mr.S.V.Vasantha Kumar

For R1 : Mr.Ma.Pa.Thangavel

JUDGMENT

The claimant, Ovan, aged 49 years, a Coolie worker, earning a sum of Rs.6,000/- p.m, met with an accident on 08.12.2010 and sustained injuries. Hence, he filed a claim petition in M.C.O.P.No.1448 of 2008 on the file of the Motor Accident Claims Tribunal (2nd Additional District Judge), Tirupur, claiming compensation of Rs.6,00,000/-.

2. The Tribunal, on consideration of oral and documentary evidence, awarded a sum of Rs.3,37,060/- as compensation, the break-up details of which are as under:

Disability	-	Rs.2,25,060/-
Pain and suffering	-	Rs. 40,000/-
Medical Expenses	-	Rs. 47,000/-
Transport expenses and extra nourishment	-	Rs. 10,000/-
Loss of comfort	-	Rs. 15,000/-
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Total	-	Rs.3,37,060/-
	-	-----

Challenging the quantum of compensation as excessive, the Transport Corporation has filed this appeal.

3. The learned counsel appearing for the appellant submitted that though the injured has suffered only 31% disability, the Tribunal has erroneously awarded a sum of Rs.2,25,060/- towards disablement compensation by adopting multiplier method, which is very high and disproportionate to the injuries sustained by the claimant. In the absence of any documentary evidence in proof of medical expenses, the award of a sum of Rs.47,000/- towards medical expenses is not sustainable. Furthermore, the compensation awarded under other heads are also excessive and therefore, the award requires to be interfered with.

4. The learned counsel appearing for the claimant/first respondent submitted that the quantum of compensation awarded by the Tribunal is neither excessive nor unreasonable. Therefore, no interference is warranted.

5. A perusal of the award passed by the Tribunal reveals that the claimant has filed a sworn affidavit before the Tribunal, wherein, he has stated that in the accident, he has sustained severe head injury, due to which, there is a blood clot in the brain and there was a fracture in the head, hence, he took treatment from CMC Hospital and PSG Hospital at Coimbatore. He further submitted that at the time of accident, he was aged 50 years and earned a sum of Rs.6,000/- by working as a coolie and due to the accident, he could not carry on his avocation as before.

6. The Doctor-P.W.3 has also filed a sworn affidavit, wherein, he stated that the injured has sustained severe head injuries and due to the said injuries, which affects the brain, there is a reduction of power in the muscles not only of left hand and left leg, but throughout the left side of the body. Due to the injuries suffered, the injured finds it difficult to open the mouth and even for taking food, the injured suffers quite a lot. The head injuries causes severe headache, which makes it difficult for the injured to concentrate on any work. Therefore, the Doctor has assessed the disability at 31%. Considering the nature of injuries sustained by the claimant, the Tribunal has also fixed the disability at 31%. In the absence of any documentary evidence to prove the income of the claimant at Rs.6,000/-, the Tribunal has fixed the monthly income at Rs.5,500/- and by adopting the multiplier of 11, has assessed the disablement compensation at Rs.2,25,000/-.

7. It is to be noted that the age of the deceased was mentioned in the claim petition as 49 years, while the claimant

in his evidence has stated that he was aged 50 years at the time of accident. As per the Sarla Verma's case, the correct multiplier to be adopted is 13. But, the Tribunal has adopted the multiplier '11'. If the proper multiplier had been adopted as noted above, the claimant would be entitled to a higher compensation. In such circumstances, this Court is of the considered view that the compensation cannot be said to be on the higher side.

8. Insofar as the compensation awarded under other heads are concerned, the Tribunal has awarded Rs.40,000/- towards Pain and suffering, Rs.47,000/- towards Medical Expenses, Rs.10,000/- towards transport expenses and extra nourishment and Rs.15,000/- towards loss of comfort. Considering the nature of injuries sustained by the claimant and the period of treatment undergone and the impact on the injuries in the day-to-day activities of the claimant, the award granted under other heads cannot be said to be excessive and, accordingly, the same are confirmed. The injuries sustained by the claimant would also affect his loss of future earning capacity, but the Tribunal has not awarded any amount under the said head. Therefore, looked at any angle, the award cannot be said to be excessive.

9. Accordingly, the Civil Miscellaneous Appeal is dismissed, confirming the award dated 31.08.2012 made in M.C.O.P.No.1448 of 2008 on the file of the Motor Accident Claims Tribunal (2nd Additional District Judge), Tirupur. No costs.

10. The appellant Transport Corporation is directed to deposit the entire compensation awarded by the Tribunal, less the amount, if any, already deposited, along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit, to the credit of claim petition, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal shall transfer the same directly to the bank account of the claimant through RTGS within a period of two weeks thereafter.

Sd/-

Assistant Registrar (CS-VII)

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Sub Assistant Registrar

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To

1. The Presiding officer,
Motor Accident Claims Tribunal
2nd Add. Dist. Judge
Tirupur.

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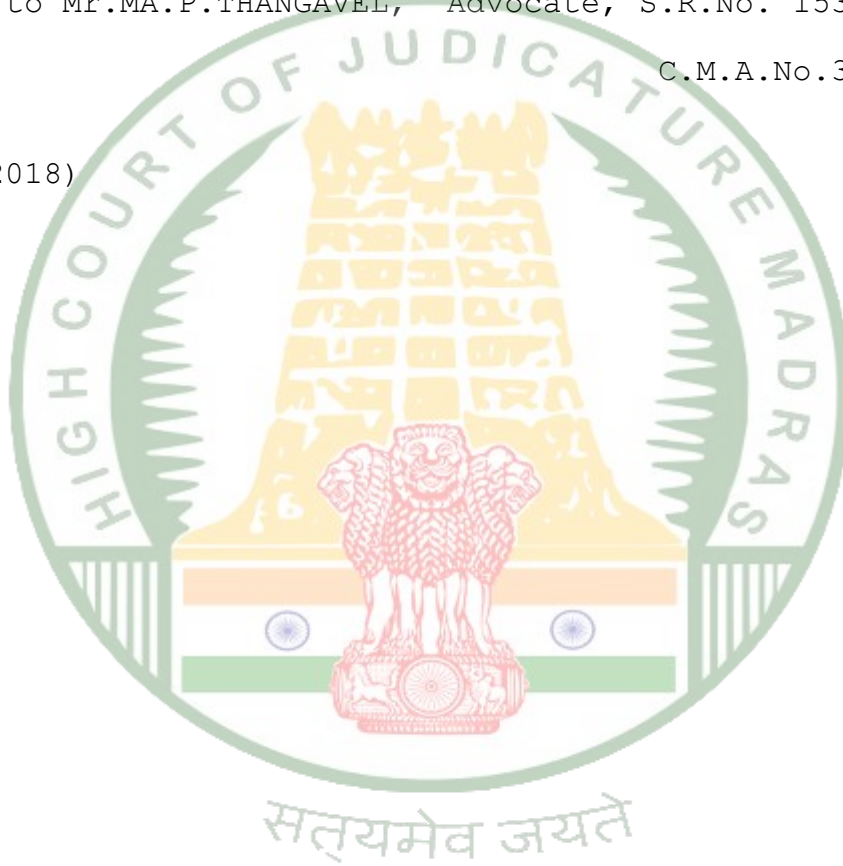
The Section Officer,
V.R. Section, High Court, Madras.(2 copies)

+1cc to Mr.S.V.VASANTHAKUMAR, Advocate, S.R.No. 1417

+1cc to Mr.MA.P.THANGAVEL, Advocate, S.R.No. 1535

C.M.A.No.3500 of 2014

RJ(CO)
TR(07/03/2018)



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