

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.02.2017

CORAM:

THE HONOURABLE Dr. JUSTICE S.VIMALA

C.M.A.No.526 of 2017
and C.M.P.No.3326 of 2017

Metropolitan Transport Corporation Ltd.

Rep. By its Managing Director,

Anna Salai,

Chennai-2.

... Appellant / Respondent

versus

S.Elammal

... Respondent /Petitioner/Claimant

Prayer : This Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 10.01.2014 made in M.C.O.P.No.4036 of 2011 on the file of the Motor Accident Claims Tribunal (III Court of Small Causes), Chennai.

For Appellant : Mr.S.Sivakumar
For Respondent : Steps not taken

JUDGMENT

The injured, S.Elammal, aged about 54 years, a coolie, earning a sum of Rs.400/- per day, met with an accident that took place on 17.06.2011 and sustained injuries, in respect of which, she filed a claim petition before the Motor Accident Claims Tribunal (III Court of Small Causes), Chennai, claiming compensation of Rs.6,00,000/-. On consideration of oral and documentary evidence, the Tribunal has awarded a sum of Rs.2,61,000/- along with interest at 7.5% p.a. from the date of claim petition till the date of deposit, the break-up details of which are as under:

Loss of income	-	Rs. 25,000/-
Transport to hospital	-	Rs. 10,000/-
Extra nourishment	-	Rs. 10,000/-
Damage to clothing	-	Rs. 1,000/-
Medical Expenses	-	Rs.1,00,000/-
Attender charges	-	Rs. 5,000/-
Loss of amenities of life	-	Rs. 5,000/-
Pain and sufferings	-	Rs. 25,000/-
Permanent Disability	-	Rs. 80,000/-
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Total	-	Rs.2,61,000/-
	-	-----

Challenging the award as excessive, the appellant/Transport Corporation has filed this Civil Miscellaneous Appeal.

2. The learned counsel appearing for the Transport Corporation submitted that the compensation awarded by the Tribunal is excessive and disproportionate and the Tribunal ought to have fixed 50% of contributory negligence on the part of the claimant and, therefore, the award has to be proportionately reduced.

3. Heard the learned counsel appearing for the appellant and perused the materials available on record as also the order passed by the Tribunal.

4. With regard to the contention of the learned counsel for the appellant that the claimant has also contributed equally to the accident and, therefore, the compensation has to be proportionately reduced, a cursory perusal of the materials on record reveals that the Tribunal has carefully considered the evidence of both P.W.1, viz., the claimant as well as R.W.1, the driver of the bus and has categorically held that the accident has happened due to the rash and negligent driving by the driver of the bus. Further, it is to be pointed out that any injury sustained by a person travelling in a bus, that too inside the bus, could only be attributed to the driving of the bus and it cannot be said that the person travelling in the bus has contributed to the accident. In the case on hand, it is not the case of the appellant that the vessel bag was that of the claimant, which fell on her leg, as the same was kept in a careless manner. Therefore, it cannot be said that by the carelessness of the claimant she has contributed to the accident. Therefore, the contention of the appellant that the claimant also contributed to the accident is liable to be rejected.

5. Insofar as the award of compensation is concerned, the records reveal that though the Doctor, P.W.2, has assessed the disability at 45%, the Tribunal has fixed the disability at 40% and awarding Rs.2,000/- per percentage of disability, quantified the compensation towards disability at Rs.80,000/=.

6. Further, the Tribunal, while fixing the income of the claimant at Rs.5,000/=-, and taking the age of the claimant at 54 years, loss of income for a period of five months has been quantified at Rs.25,000/-. Further, transportation expenses at Rs.10,000/-; Rs.10,000/- towards Extra nourishment; Rs.1,000/- towards damage to clothes have been awarded. Based on the bills submitted by the claimant supporting the medical treatment taken by her, Rs.1,00,000/- has been awarded towards medical expenses (though the actual bills show the amount incurred is

Rs.89,546/-). While the Tribunal has awarded Rs.5,000/- towards attender charges, Rs.5,000/- has been awarded towards loss of amenities of life and Rs.25,000/- has been awarded towards pain and sufferings, which the claimant would have undergone on account of the accident. In all, the Tribunal quantified the total compensation at Rs.2,61,000/-.

7. A perusal of the above award clearly reveals that the Tribunal has taken into account the merits of the claimant's claim and has arrived at the quantum of compensation, which cannot be said to be excessive or unreasonable. Therefore, this Court is of the considered view that no interference is called for with the well considered findings of the Tribunal and, this appeal deserves to be dismissed.

6. In the result, the Civil Miscellaneous Appeal is dismissed, confirming the award dated 10.01.2014, passed by the Motor Accident Claims Tribunal (III Court of Small Causes), Chennai, in M.C.O.P.No.4036 of 2011. Consequently, connected miscellaneous petition is closed.

7. 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, if any, already deposited to the credit of the 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 claimant is permitted to withdraw the award amount on filing necessary application.

-s/d-

Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

ogy/GLN
To

1. The Motor Accident Claims Tribunal
(III Court of Small Causes), Chennai.
2. The Section officer
VR Section, High Court, Madras

C.M.A.No.526 of 2017

VGII(CO)
SP(17/02/2018)