

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.02.2017

CORAM:

THE HONOURABLE Dr. JUSTICE S.VIMALA

C.M.A.No.656 of 2017
and C.M.P.No.3827 of 2017

The Managing Director,
Tamil Nadu State Transport
Corporation,
Villupuram Division - I,
No.3/137, Salamedu,
Vazhuthareddy,
Villupuram.

..Appellant/Respondent

Versus

B.Karthick

..Respondent/Petitioner

Prayer : This Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 07.01.2013 made in M.C.O.P.No.1098 of 2009 on the file of the Motor Accident Claims Tribunal, VI Small Causes Court, Chennai.

For Appellants : Mr.S.Sairaman

JUDGMENT

The claimant, B.Karthick, S/o. Baskar, employed in Auto Lining Works, earning a sum of Rs.300/- per day, met with an accident on 07.11.2008 and sustained injuries. Hence, he filed a claim petition in M.C.O.P.No.1098 of 2009 before the Motor Accident Claims Tribunal, VI Small Causes Court, Chennai, claiming compensation of Rs.15,00,000/-.

1.1. As against the claim made, the Tribunal has passed the award for a sum of Rs.8,55,000/- payable 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. 36,000/-
Transportation -	Rs. 10,000/-
Extra nourishment -	Rs. 10,000/-
Damage to clothes -	Rs. 1,500/-
Medical expenses -	Rs. 1,72,000/-
Attendant charges -	Rs. 10,000/-
Loss of amenities -	Rs. 50,000/-
Pain and sufferings -	Rs. 50,000/-
Future medical expenses -	Rs. 1,80,000/-
LOSS OF marital status and loss of expectation of life -	Rs. 50,000/-
Disability and	

loss of earning power	-	Rs. 2,85,120/-
Total	-	Rs. 8,54,620/-
Rounded off	-	Rs. 8,55,000/-

1.2. Challenging the award as excessive, the Transport Corporation has filed this appeal.

2. The main contention of the learned counsel appearing for the appellant is that the award of Rs.1,80,000/- for future medical expenses and the award of Rs.50,000/- towards pain and sufferings are unsustainable.

3. In order to appreciate as to whether the grant of future medical expenses is justified or not, it is necessary to look into the details of the injury suffered by the claimant.

3.1. In para-10 of the award passed by the Tribunal, it is specifically stated that the doctor advised for the total replacement of right hip after some years, for which, a hip replacement surgery need to be done. Considering the future expenses on account of transport, surgery, pain and sufferings and extra nourishment, loss of earnings and loss of earning capacity, just compensation would be Rs.1,80,000/- towards future medical expenses, which the Tribunal ought to have elaborated but the omission did not make the award unjust, as it is found to be reasonable in terms of quantum.

3.2. It is relevant to point out that the claimant has suffered crush injury in the pelvis with central dislocation of the right hip, disruption of the right sacro illiac joint, fracture of the superior and interior limbs to both pelvic and ARM and disruption of the pelvic symphysis and sciatic nerve palsy and retro-peritoneal haematoma. There is a shortening of right leg to the extent of 1½ inch and there is disfigurement in the hip as well as in the thigh. There is a fracture of 11th rib bone and there is restriction of the movement to an extent of 40°. There is loss of power of muscles in the foot leading to disability in the walking. These disabilities would have caused direct impact upon the marital prospects of the claimant, loss of earning capacity as well as on the quality of life.

3.3. Perusal of the record would reveal that there are multiple injuries affecting critical part of the body which has resulted in a) surgery over right knee; b) shortening of leg; c) damage of nerves; d) disfiguration of right hip and thigh; e) difficulty in breathing; f) restriction of movement around hip and g) scar on the right hand, right thigh and right side of the stomach. Still considering the disability with reference to the whole body, the percentage of loss of earning capacity itself has been taken only as 22%. The physical disability would not match the functional disability at all times. In other words, the functional disability need not be the same as that of the physical disability. The physical disability in this case would

lead to loss of earning capacity at 100%, but, the Tribunal has calculated the loss of earning capacity by taking the functional disability only at 22%. Hence, the award passed cannot be said to be excessive.

4. In the result, the Civil Miscellaneous Appeal is dismissed, confirming the dated 07.01.2013 passed in M.C.O.P.No.1098 of 2009 by the Motor Accident Claims Tribunal, VI Small Causes Court, Chennai.

5. The Transport Corporation is directed to deposit the entire amount of compensation, less the amount already deposited if any, along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit, 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(CCC)

//True Copy//

Sub Assistant Registrar

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To

The Motor Accident Claims Tribunal,
VI Small Causes Court,
Chennai.

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C.M.A.No.656 of 2017

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