

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.02.2017

CORAM:

THE HONOURABLE Dr. JUSTICE S.VIMALA

C.M.A.No.852 of 2017

The Metropolitan Transport
Corporation Ltd.,
Rep. by its Managing Director,
Chennai - 2.

... Appellant / respondent

versus

Sarath Kumar (minor)
Rep. by his father K.Selvam.

... Respondent/Petitioner

Prayer : The appeal filed under Section 173 of Motor Vehicles Act, against the Judgment and Decree dated 03.03.2014 made in M.C.O.P.No.3360 of 2012 on the file of the Motor Accident Claims Tribunal (III Court of Small Causes), Chennai.

For Appellant : Mr.S.Sivakumar

JUDGMENT

The claimant minor Sarath Kumar, aged 16 years, a Tailor, earning a sum of Rs.10,000/- per month, met with an accident on 19.07.2012 and sustained injuries. Hence, the minor represented by his father filed a claim petition in M.C.O.P.No.3360 of 2012 made in M.C.O.P.No.3360 of 2012 before the Motor Accident Claims Tribunal (III Court of Small Causes), Chennai, claiming compensation of Rs.6,60,000/- which was restricted to Rs.6,00,000/-.

2. The Tribunal, after considering the oral and documentary evidence, passed an award for a sum of Rs.2,55,200/- as compensation, the break-up details of which read as under:

Loss of income	-	Rs.	18,000/-
Transport to Hospital	-	Rs.	10,000/-
Extra nourishment	-	Rs.	10,000/-
Damage to clothing	-	Rs.	1,000/-
Medical expenses	-	Rs.	10,000/-
Attendant charges	-	Rs.	10,000/-
Loss of amenities of life	-	Rs.	25,000/-
Pain and sufferings	-	Rs.	40,000/-
Permanent disability	-	Rs.	34,000/-
Loss of earning power	-	Rs.	97,200/-

Total	-	Rs.	2,55,200/-

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

3. Though the appeal has been filed questioning the finding of negligence as well as the quantum of compensation, however, the learned counsel appearing for the appellant, at the time of hearing, restricted his argument on the question of compensation alone.

4. It is submitted by the learned counsel for the appellant Transport Corporation that in the absence of any documentary evidence to prove the income and job of the claimant, the Tribunal ought not to have fixed the income of the injured at Rs.4,500/- and ought not to have adopted multiplier method. Therefore, the compensation awarded at Rs.97,200/- under the head loss of earning power is very high and the same has to be reduced.

5. A perusal of the award passed by the Tribunal reveals that the injured was aged about 16 years at the time of accident. Except Ex.P2, there was no other document to prove the age of the injured and, therefore, the Tribunal has fixed the age of the injured as 16 years. It is claimed by the claimant that he was working as Tailor in the Naidu Hall and earning a sum of Rs.10,000/- per month. However, no document was filed on the side of the claimant to prove the same. Therefore, the Tribunal fixed the monthly income of the injured at Rs.4,500/- per month.

6. However, a perusal of the award passed by the Tribunal reveals that the Tribunal has awarded compensation under the heads permanent disability as well as loss of earning power, which is not sustainable.

7. Considering the fact that due to the injuries, the injured would have been prevented from attending his work for a maximum period of four months, the Tribunal has awarded a sum of Rs.18,000/- . Furthermore, since the injured lost his great toe on the right foot, which is permanent disability, which disabled him to perform his day to day work, thus not only depriving him of his earnings, but also physically and mentally the claimant would be suffering throughout their life, the Tribunal has awarded a sum of Rs.97,200/- ($\text{Rs.4500} \times 12 \times 18 \times 10\%$) towards loss of earning power. However, this Court feels that the functional disability ought to be fixed at 14% and the compensation requires to be reworked. Accordingly, this Court awards a sum of Rs.1,36,080/= under the head loss of earning power ($\text{Rs.4500} \times 12 \times 18 \times 14\%$), which is rounded off to Rs.1,36,000/=. Therefore, award of Rs.97,200/- towards loss of

earning capacity, an award of Rs.34,000/- towards permanent disability together would be Rs.1,36,000/- (under one head).

8. Insofar as the compensation awarded under other heads are concerned, the Tribunal has awarded a sum of Rs.10,000/- each towards Transport to Hospital, extra nourishment, medical expenses and attendant charges and Rs.1,000/- towards damage to clothing, Rs.25,000/- towards Loss of amenities of life and Rs.40,000/- towards pain and sufferings.

9. Considering the injuries suffered by the claimant, the period of treatment, and the impact of the injuries on the earning capacity of the injured, while this Court is of the considered view that the Tribunal has awarded the just and reasonable compensation under the heads Transport to Hospital, Extra Nourishment, Pain & Sufferings and Attendant Charges, however, the amount awarded under the head Loss of Amenities of life is a bit on the higher side and requires reduction. Accordingly, the compensation awarded under the head Loss of Amenities of life is reduced to Rs.20,000/- from Rs.25,000/-. The compensation awarded under the head Damage to Clothing is enhanced to Rs.1,200/= from Rs.1,000/=.

10. Accordingly, the compensation awarded by the Tribunal is restructured under the following heads :-

Loss of income	-	Rs. 18,000/-
Transport to Hospital	-	Rs. 10,000/-
Extra nourishment	-	Rs. 10,000/-
Damage to clothing	-	Rs. 1,200/-
Medical expenses	-	Rs. 10,000/-
Attendant charges	-	Rs. 10,000/-
Loss of amenities of life	-	Rs. 20,000/-
Pain and sufferings	-	Rs. 40,000/-
Loss of earning power	-	Rs. 1,36,000/-

Total	-	Rs. 2,55,200/-

11. Accordingly, the Civil Miscellaneous Appeal is dismissed, confirming the award dated 03.03.2014 made in M.C.O.P.No.3360 of 2012 on the file of the Motor Accident Claims Tribunal (III Court of Small Causes), Chennai.

11. The 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. The injured would have attained majority as on date. On such deposit being made,

the Tribunal, on production of age proof, shall transfer the compensation directly to the Bank Account of the claimant through RTGS within a period of two weeks thereafter.

Sd/-
Assistant Registrar(CS V)

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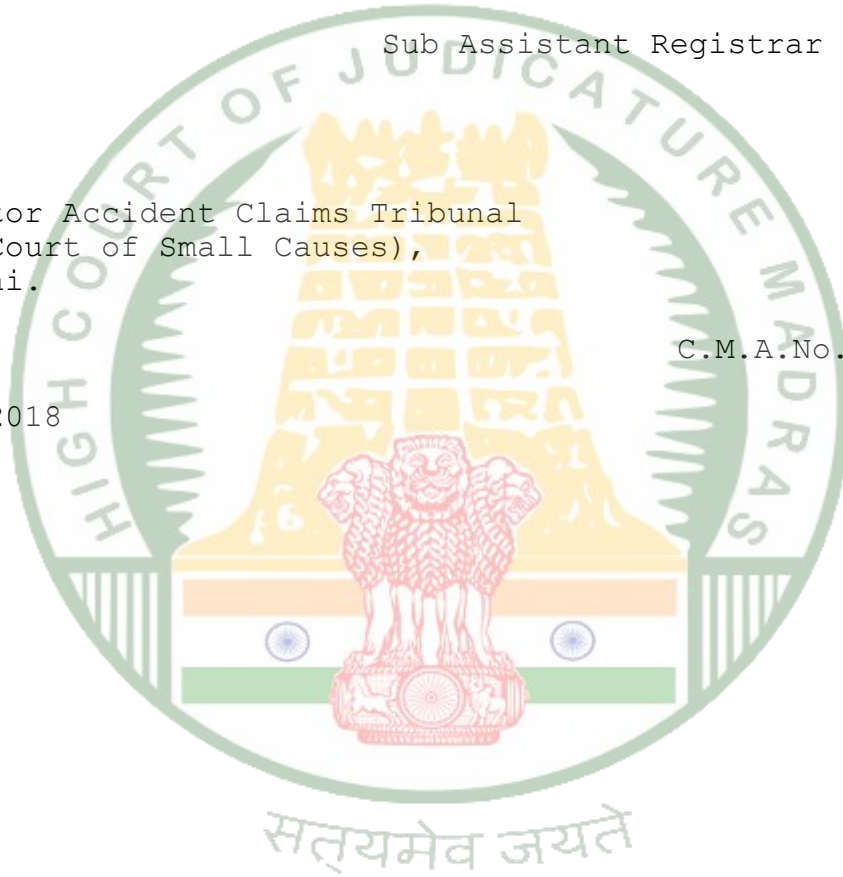
Sub Assistant Registrar

To

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

C.M.A.No.852 of 2017

VGI (CO)
NR 10/05/2018



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