

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 31.01.2017

CORAM:

THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

C.M.A.Nos.3561 and 3473 of 2013

and

MP Nos.1 and 1 of 2013

C.M.A.No.3561 of 2013

The Managing Director,
Tamil Nadu State Transport Corporation
(Coimbatore-Division-2) Ltd.,
Chennimalai Road, Erode District

.... Appellant/2nd
respondent

Vs.

1. P.Kulandhasamy

1st Appellant/Claimant

2. N.Devendhra

2nd respondent/
1st respondent

C.M.A.No.3473 of 2013

The Managing Director,
Tamil Nadu State Transport Corporation
(Coimbatore-Division-2) Ltd.,
Chennimalai Road, Erode District.

... Appellant/
2nd Respondent

Vs.

1. K.Rangasamy

1st Appellant/Claimant

2. N.Devendhran

...2nd Respondents/
1st Respondent

Prayer in both C.M.As:- Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 11.03.2013 made in MACT O.P.Nos.450 & 452 of 2009 respectively on the file of the Motor Accidents Claims Tribunal, IV Additional District Judge, Bhavani.

For Appellant : Mr.S.V.Vasantha Kumar

For R1 : C.Kulanthaivel

For R2 : Given up.

JUDGMENT

The State Transport Corporation has come forward with the present twin appeals challenging a common award passed in separate claims made by the rider as well as the pillion rider of a motorcycle that was knocked down in a road accident by a bus belonging to the appellant on 17.04.2007.

2. The rider of the motorcycle has filed M.C.O.P.No.452 of 2009 in which he was awarded Rs.1,15,039/- payable with interest at 7.5% per annum. The pillion rider had filed M.C.O.P.No.450 of 2009 and he was awarded Rs.2,88,457/-.

C.M.A.No.3561 of 2009

(i) This case arises out of the award passed in M.C.O.P.No.450 of 2009 filed by the pillion rider. He had suffered fracture to both radius and ulna of his right forearm and also fracture to right femur with knee fracture shaft at lower third level. PW-2, the doctor has assessed his disability at 53% and for which the Tribunal has reduced the same to 40% which it treated as functional disability and awarded the compensation of Rs.1,72,800/-. Towards medical expenses it has granted Rs.93,657/- and the rest it has distributed on other non pecuniary heads of general damages.

(ii). The learned counsel for the appellant submitted that the Tribunal should not have treated the disability of the claimant as functional disability but should have treated it only as permanent disability and should not have applied multiplier method. Even if it is treated as one and the same to be valued at Rs.3,000/- per percentage of disability which implies he will be entitled to compensation of Rs.1,20,000/-. The Tribunal has awarded only Rs.10,000/- towards pain and suffering whereas for correction of twin fracture both in the hand and leg, it would be found inadequate. In this head he should have been given atleast Rs.50,000/- and if so reckoned and considering the compensation awarded on other heads, the total quantum payable as per the award does not show serious variance. Therefore, I refrain from interfering with the award passed by the Tribunal and it is confirmed.

C.M.A.No.3473 of 2013

(iii) Here, the rider of the motorcycle had suffered fracture to his right wrist as well as the right little finger. The doctor has assessed his percentage of disability at 23% whereas, the Tribunal reduced it at 15% applied multiplier method and arrived at a compensation at Rs.64,800/- and it has awarded Rs.28,239/-, for pain and suffering it has awarded Rs.10,000/-.

(iv) The learned counsel for the appellant submitted the same argument that he had advanced for the earlier appeal and this

Court also for same reason finds no grounds to interfere in the award passed by the Tribunal.

3. In the result, both the appeals are dismissed as devoid of merits but without costs and the award passed by the Tribunal is hereby confirmed. The appellant is directed to deposit the award amount, less any amount already deposited, within four weeks from the date of receipt of a copy of this order, whereupon the claimants would be entitled to withdraw the same forthwith. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1.The IV Additional District Court,
Motor Accidents Claims Tribunal, Bhavani.

+1cc to Mr.S. Vasanthakumar, Advocate SR. 6093/17

+1cc to Mr.C. Kulanthaivel, Advocate SR. 6297/17

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KFK (CO)
VR(3/03/2017)

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