

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.01.2017

CORAM :

THE HONOURABLE Mr. JUSTICE N.SESHASAYEE

CMA.No.565 of 2008

and

M.P.No.1 of 2008

The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Coimbatore Division II,
Chennimalai Road, Erode-1. ... Appellant/Respondent

Vs.

Neelamalai Muthusamy ... Respondent/Petitioner

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award made in MCOP.No.359 of 2005 dated 07.08.2007 on the file of the Motor Vehicles Accident Claims Tribunal and Additional District Judge, Fast Track Court IV at Tiruppur.

For Appellant : Mr.S.V.Vasantha Kumar

For Respondent : Ms.B.Devagi Thangavel
for Mr.Ma.Pa.Thangavel

JUDGMENT

The State Transport Corporation has challenged the award dated 07.08.2007 in MCOP.No.359 of 2005 on the file of the Motor Accidents Claims Tribunal, Additional District Judge, Fast Track Court IV at Tiruppur. By the impugned order, it was directed to pay a compensation of Rs.1,55,400/- with interest @ 7.5% per annum.

2. On 14.03.2005 at about 8.15 p.m., when the claimant/respondent was riding his moped, he was knocked down by a bus belonging to the appellant. In the said accident, claimant suffered injuries for which he approached the Motor

Accident Claims Tribunal with a claim of Rs.5,00,000/-, against which the Motor Accident Claims Tribunal has passed an award as above. The claimant was 46 years at that relevant time and was a painter by profession and he had suffered fracture to his right ankle. PW.2, the doctor who examined the injured has found restricted movement to the right ankle of the claimant as well as loss of stability and assessed his permanent disability at 38%. The Tribunal by adopting a multiplier that commensurate with his age at 13 and fixing his monthly income notionally at Rs.3,000/-, determined the loss of earning power at 30%, and granted Rs.1,40,400/- on the head of loss of earning capacity. On the head of pain and suffering, it has granted only Rs.10,000/-.

3. It is the second occasion Mr.S.V.Vasantha Kumar, learned counsel for appellant sought time for filing necessary vakalath. He is very much in the panel of State Transport Corporation and it is unfortunate that the appellant has not made any arrangement for the conduct of this case. This Court appreciates the initiative of the learned counsel and permitted him to argue.

4. The learned counsel for the appellant submitted that it is not a case where the victim in the accident has suffered any functional disability inasmuch as the injury was to his right ankle whereas he is only a painter by avocation. Therefore, the Tribunal has committed an error in adopting multiplier method for determining loss of earning capacity of the victim. All that is permissible was only just and fair compensation for the disability he had suffered.

5. While it may be true that there may not have been any functional disability to deny the claimant in pursuing his livelihood, yet the overall amount granted cannot be said to be excessive. For instance, for pain and suffering he has been awarded a paltry sum of Rs.10,000/- and nothing was awarded for amenities and assistance etc. Even on the head of loss of income which the claimant would have suffered at least for a period of three to four months, the Tribunal has awarded only for one month. If these factors are correctly evaluated, then the difference in compensation that may arise by the change of methodology for determining the compensation on the head of permanent disability would not be much.

6. I find no merit in this appeal and the same is dismissed without costs. The appellant is directed to deposit the entire award amount with interest, less if any amount already deposited within four weeks from the date of receipt of copy of this order and thereupon the claimant is entitled to withdraw the same forthwith. Consequently, connected miscellaneous petition is

closed. For the efforts of the learned counsel for the appellant in the conduct of the case before this Court he is entitled to such remuneration as would be otherwise payable to him.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

ds

To:

The Motor Accidents Claims Tribunal,
Additional District Judge,
Fast Track Court No.IV,
Coimbatore at Tiruppur.

+1cc to Mr.Ma.Pa.Thangavel, Advocate, S.R.No.1533
+1cc to Mr.S.V.Vasantha Kumar, Advocate, S.R.No.1203

C.M.A.No.565 of 2008

RV(CO)
CA(23/02/2017)



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