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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.07.2017

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THE HONOURABLE Dr. JUSTICE. S.VIMALA

C.M.A.No.2176 of 2017
and C.M.PNo.11515 of 2017

The Managing Director,
Tamilnadu State Transport Corporation Ltd.,
Railway Station Road,
Kumbakonam Town & Munsif,
Kumbakonam.

... Appellant / Respondent

versus

Jayaraman

... Respondent / Claimant

Prayer: Appeal filed under Section 173 of Motor Vehicle Act 1988, against the Judgment and Decree dated 21.04.2006 made in M.C.O.P.No.261 of 2005 on the file of the Motor Accident Claims Tribunal (Subordinate Judge), Nagapattinam.

For Appellant : Mr.N.Anand

JUDGMENT

This Appeal has been filed the Transport Corporation, challenging the compensation awarded by the Tribunal at Rs.55,000/- to the claimant as excessive and unreasonable.

2. The claimant, Jayaraman, an agriculturist, earning a sum of Rs.4500/= per month, met with an accident on 11.4.05. He filed a claim petition in M.C.O.P.No.261 of 2005 claiming compensation in a sum of Rs.3,00,000/-.

3. The Tribunal on consideration of oral and documentary evidence available before it, passed an award for a sum of Rs.55,000/-, which is challenged as excessive and disproportionate.

4. Learned counsel appearing for the appellant contended that in the absence of documentary evidence to prove the treatment taken by the claimant, the amount awarded is on the higher side and, therefore, the same needs to be reduced.



5. In order to appreciate the contention, it is necessary to consider the award passed by the Tribunal. A perusal of the materials available on record reveals that the claimant took treatment as in-patient from 11.04.2005 to 02.05.2005. P.W.2, the Doctor, who treated the claimant has been examined to speak about the grievous injuries sustained by the claimant. According to his evidence, there is a fracture of hipbone and there is mal-union after the treatment. The doctor has certified the disability at 40%.

6. However, during cross examination, P.W.2 has admitted that the percentage of disability was not calculated in terms of the provisions of the Employees' Compensation Act. It is the further evidence of P.W.2 that the mal-union could have happened due to the claimant not following the medical advice.

7. The Tribunal rendered a finding that the materials produced by the claimant do not conclusively prove that he has taken treatment as in-patient, awarded a consolidated sum of Rs.50,000/- as compensation towards pain and suffering and the consequences of the injury and an all inclusive sum of Rs.5,000/- towards medical expenses, extra nourishment and transport expenses.

8. However, a careful perusal of the documents available on record coupled with the finding rendered by the Tribunal, it is evident that document has been filed to show that the claimant was treated as in-patient from 11.04.2005 to 02.05.2005. However, the Tribunal had entertained a doubt about the document and has rendered a finding that the claimant has not conclusively proved that he was treated as an in-patient. If the Tribunal had any doubt regarding the veracity of the document submitted by the claimant, it should have called for the complete documents from the concerned Hospital regarding the treatment given to the claimant. However, instead of doing that the Tribunal entertaining a doubt about the genuineness of the document filed, had chosen to award only a meagre sum, when there is fracture of hip bone. Though the compensation awarded is very meagre, even that award is being challenged by the Transport Corporation on the ground that award is excessive.

9. From the details of the award passed, it is clear that the award passed, by no stretch of imagination, could be termed as excessive. Fracture to the hip bone has occurred to a person aged about 38 years, which will definitely have an impact throughout his career. The challenge made in this appeal is without merits and the grounds raised therein do not merit acceptance. Accordingly, this appeal is liable to be dismissed.



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10. Accordingly, the Civil Miscellaneous Appeal is dismissed, confirming the award dated 21.04.2006 made in M.C.O.P.No.261 of 2005 on the file of the Motor Accident Claims Tribunal (Sub Court), Nagapattinam. Consequently, connected miscellaneous petition is closed. However, there shall be no order as to costs.

11. The appellant/Transport Corporation is directed to deposit the entire award amount, 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 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 Tribunal is directed to transfer the amount directly to the Bank account of the claimant through RTGS within a period of two weeks thereafter.

Sd/-

Assistant Registrar (CS-vii)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal
(Sub Court),
Nagapattinam.

2. The Section Officer,
V.R.Section,
Madras High Court,
Chennai. (2 copies)

C.M.A.No.2176 of 2017

sr (CO)
TR(26/02/2018)