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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.06.2017

CORAM

THE HONOURABLE DR.JUSTICE S.VIMALA

C.M.A. No.2190 of 2017

and

C.M.P. No.11706 of 2017

The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Division - II,
Kumbakonam,
Trichirapalli Town

... Appellant

Versus

1.Senthil

2.Jothimani

3. Branch Manager,
The Oriental Insurance Company Ltd.,
Thiruvarur Town.

... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and award made in M.C.O.P. No.271 of 2002, dated 07.05.2004 on the file of the Motor Accidents Claims Tribunal (Assistant Sessions Court), Chief Judicial Magistrate, Nagapattinam.

For Appellant: Rajnish Pathiyil

JUDGEMENT

The claimant, Senthil, aged 21 years, earning a sum of Rs.3,000/- p.m. met with an accident on 27.1.2001 in which the bus belonging to the appellant corporation collided with the lorry in which the claimant was traveling as a Cleaner. Therefore, the claimant filed a claim petition claiming a sum of Rs.2,50,000/=.

2. The Tribunal, on consideration of oral and documentary evidence, awarded a sum of Rs.40,000/= as compensation. Aggrieved by the said award, the appellant/Transport Corporation has preferred the present appeal questioning the compensation



awarded as excessive and unreasonable.

3. Though the Tribunal has awarded a sum of Rs.40,000/- considering the nature of injury, period of treatment, age, avocation, income etc., however, has not quantified the compensation under various heads, but has awarded the same as a lumpsum amount.

4. For appreciating the contention of the appellant that the amount awarded is excessive, it is but necessary to have a perusal of the injuries suffered by the claimant. It is evident from the records that consequent upon the accident, the claimant had taken treatment at Government Medical College Hospital, Thanjavur for a period of 5 days. Due to the dislocation in the bones, particularly in the shoulder joints, the Doctor has certified that there will be difficulty for the claimant in discharging his daily activities. Though the doctor has assessed the disability at 56%, however, the Tribunal found that there was no fracture to the bones and for the various reasons recorded in the award, held that the percentage of disability assessed by the Doctor is excessive and there cannot be any impediment for the claimant to discharge his day to-day activities.

5. On a careful consideration of the above finding, this Court is of the considered view that the finding recorded by the Tribunal is obviously incorrect, as, in order to suffer disablement, it is not necessary that there should always be fracture. The dislocation of the joint is out of rupture of muscles connecting the bone with the shoulder. Once there is dislocation, even after re-location the chances of dislocation occurring again cannot be ruled out. Therefore, the claimant needs to be careful while carrying heavy objects and it would be difficult for the claimant to carry weight.

6. Considering the nature of disability and the impact of disability that would affect the functional ability of the claimant, the award of Rs.40,000/- ordered by the Tribunal cannot be said to be excessive. Though the Tribunal has not given the above compensation under the various heads, as is the usual practice in passing the award, it is trite to mention that the above award amount would invariably fall under the heads medical expenses, transport expenses, extra nourishment, loss of earnings and loss of enjoyment of amenities, etc..

7. In such view of the matter, this Court is of the considered opinion that no grounds have been made out for interfering with the order passed by the Tribunal. Accordingly, this appeal stands dismissed. Consequently, connected Miscellaneous Petition is closed. However, there shall be no order as to costs.



8. The appellant /Transport Corporation is directed to deposit the entire award amount along with interest and costs as ordered by the Tribunal, less the amount, if any, already deposited, 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 award amount directly to the bank account of the claimant, through RTGS, within a period of two weeks thereafter.

Sd/-
Assistant Registrar(CS V)

//True copy//

Sub Assistant Registrar

vsi2/GLN

To

- 1.Motor Accidents Claims Tribunal
(Assistant Sessions Court),
Chief Judicial Magistrate, Nagapattinam.
2. The Section Officer,
V.R. Section, High Court, Madras.

C.M.A. No.2190 of 2017

GMR(CO)
GN(09/03/2018)