

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 18.07.2017
CORAM
THE HONOURABLE Dr. JUSTICE. S.VIMALA
C.M.A.No.2233 of 2017
and C.M.P.No.11834 of 2017

The Managing Director,
Tamil Nadu State Transport
Corporation Ltd.,
Division-I,
No.37, Mettupalayam Road,
Coimbatore.

... Appellant / 2nd respondent

versus

1. A.P.Ranganathan ... 1st respondent/claimant/
Petitioner
2. M.Sathiya Pal (Given up) ... 2nd respondent/1st respondent

Prayer: Appeal filed under Section 173 of Motor Vehicle Act 1988, against the Order and Decree dated 10.08.2006 made in M.A.C.T.O.P.No.134 of 2006 on the file of the Motor Accident Claims Tribunal cum Principal Subordinate Court, Coimbatore.

For Appellant : M/s.N.Anand

JUDGMENT

The claimant, Ranganathan, aged 65 years, a retired School Teacher, who was taking Tuition and earning a sum of R.4,200/- p.m., met with an accident on 18.12.2000 and sustained injuries, in respect of which, he filed a claim petition, claiming compensation of Rs.3,50,000/-.

2. As against the claim made for Rs.3,50,000/-, the Tribunal, after considering the oral and documentary evidence, passed an award for a sum of Rs.1,43,890/-, payable by the Transport Corporation along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit, the break-up details are as under :-

For Injury and pain and suffering	-	Rs. 80,000/-
Medical expenses	-	Rs. 62,890/-
Extra nourishment	-	Rs. 500/-
Transport Expenses	-	Rs. 500/-

Total	-	Rs.1,43,890/-

The appellant/Transport Corporation has not only challenged the compensation awarded as excessive but has also questioned the finding of negligence and has preferred this appeal.

3. The main contention of the learned counsel for the appellant Transport Corporation is that the Tribunal ought not to have relied upon the evidence of the claimant with regard to the nature of injuries, occupation and income of the claimant. According to the Transport Corporation, the accident took place only on account of negligence on the part of the injured himself.

4. This Court gave its anxious consideration to the contentions raised and perused the materials available on record as also the findings rendered by the Tribunal.

5. The main issue that needs to be decided is whether there is any material available on record to show that the accident took place only on account of negligence of the claimant.

6. The claimant has examined himself and deposed about the manner of the accident. While contention has been raised regarding the finding of negligence, it is to be noted that the best evidence that was available to the appellant is that of the driver of the bus, who could have spoken about the manner in which the accident had occurred. To get the benefit out of the said contention, the appellant should have examined its driver. However, for reasons best known, the appellant has not chosen to examine its driver. Not only the driver, but nobody was examined on the side of the appellant. Non-examination of the driver of the Transport Corporation is fatal to the case of the appellant. Unless convincing reasons are placed to justify the non-examination of the driver, the court has to necessarily draw adverse inference and further the court will have to accept the version of the claimant with regard to the manner in which the accident had occurred.

7. In the case on hand, the driver of the bus has not been examined, while the claimant had examined himself. The evidence of the claimant is in accordance with the averments in the claim petition. Therefore, the contention of the appellant that the accident took place only on account of negligence on the part of injured is liable to be rejected.

8. Insofar as the injuries are concerned, it is the case of the claimant that he suffered fracture of right 4, 5 and 6 ribs and fracture in right humerus; he suffered fracture in right ulna; and he suffered injury over the right shoulder. The doctor has certified four injuries as grievous in nature.

9. The doctor, who has been examined on behalf of the claimant, in his evidence has stated that the claimant has suffered anterior dislocation in right shoulder apart from fracture in right humerus; implant has been used during surgery and that there had been mal-union of bones in the rib. Considering all the injuries, the doctor has assessed the disability at 39.4%.

10. The Tribunal, on the materials placed before it, has awarded a consolidated sum of Rs.80,000/- for the injuries as well as for pain and suffering. The Tribunal has further awarded a sum of Rs.62,890/- towards medical expenses, which was supported by bills. A sum of Rs.500/- has been awarded towards extra nourishment and Rs.500/- has been awarded towards transportation. In all, the Tribunal has awarded a sum of Rs.1,43,890/-.

11. Keeping in mind the injuries suffered by the claimant and the surgeries performed and the period of treatment taken by the claimant, the Tribunal ought to have awarded compensation under the heads 'loss of enjoyment of amenities', 'cost of attendant charges' and 'loss of earnings for the treatment period'. However, the Tribunal has not chosen to award any compensation under the above heads. In the absence of any compensation being awarded under the above heads, the compensation awarded by the Tribunal, which has been detailed above, cannot be said to be excessive or unreasonable. This Court finds no reason to interfere with the order passed by the Tribunal.

12. Accordingly, the Civil Miscellaneous Appeal is dismissed, confirming the award passed by the Motor Accident Claims Tribunal cum Principal Subordinate Court, Coimbatore in 10.08.2006 made in M.A.C.T.O.P.No.134 of 2006. No costs. Consequently, connected miscellaneous petition is closed.

13. 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, within a period of four weeks from the date of receipt of a copy of this Judgement. 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(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal
cum Principal Subordinate Court,
Coimbatore.

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

C.M.A.No.2233 of 2017

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