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IN THE HIGH COURT OF JUDICATUE AT MADRAS

DATED 15.02.2017

CORAM

THE HONOURABLE DR. JUSTICE S.VIMALA

C.M.A. No.257 of 2017

and

CMP.No.1705 of 2017

Tamil Nadu State Transport Corporation
Villupuram Division-1 Ltd.,
rep. by its Managing Director,
3/137, Salamedu,
Valudhareddy Post,
Villupuram-605 602

.. Respondent/Appellant

Versus

S.Dhanaseelan

..

Petitioner/Respondent

Prayer:-

Appeal filed under Section 173 of the Motor Vehicles Act, 1989 against the award dated 14.07.2016 made in M.C.O.P.No.1823 of 2009 on the file of Motor Accident Claims Tribunal, (in the III Court of Small Causes), Chennai.

For Appellant : Mr.S.Sairaman

J U D G M E N T

The claimant, Mr.Dhanaseelan, aged 55 years, doing Aluminium melting work, earning a sum of Rs.10,000/- p.m., met with an accident on 22.06.2006, due to which he sustained grievous injuries and his right hand was also amputated. Hence, the claimant filed Claim Petition in M.C.O.P.No.1823 of 2009, claiming a sum of Rs.5,00,000/- as compensation.

2. The Claims Tribunal, on consideration of oral and documentary evidence, awarded a sum of Rs.7,10,190/- as compensation, (after deducting 10% towards contributory negligence by the claimant) with interest @ 7.5% per annum, from the date of petition till the date of deposit. The break-up details of the same are as under:



Loss of Income	-	Rs. 40,080/-
Attender Charges	-	Rs. 10,020/-
Transport to Hospital	-	Rs. 10,000/-
Extra Nourishment	-	Rs. 30,000/-
Damages to Clothes	-	Rs. 1,000/-
Non Pecuniary Loss		
Damages for Mental Shock and agony	-	Rs. 20,000/-
Pain and Suffering	-	Rs. 50,000/-
Loss of earning power	-	Rs.5,28,000/-
Loss of amenities	-	Rs. 50,000/-
Disfigurement	-	Rs. 50,000/-

Total	-	Rs.7,89,100/-
Less:	-	Rs. 78,910/-

Amount awarded	-	Rs.7,10,190/-

3. The learned counsel appearing for the appellant submitted that the Tribunal has failed to consider that no police officer was examined to prove the negligence on the part of the bus driver. It is his further submission that the Tribunal has accepted the evidence of the claimant and awarded huge compensation.

3. This Court, heard the submissions of the learned counsel for the appellant and also perused the materials available on record as also the findings rendered by the Tribunal.

4. Though it is contended by the appellant that the investigating officer has not been examined by the claimant to prove about the aspect of negligence, however, this Court is of the considered view that the question of negligence having been raised by the insurer/appellant, it is for the appellant to put forth their case and the claimant is not required to examine the investigating officer to prove negligence on the part of the driver of the offending vehicle. However, the Tribunal, on analysis of the evidence on record has fixed 10% contributory negligence on the claimant and, this Court is of the view that the said finding is based on materials available on record and, therefore, no interference is warranted.

5. A perusal of the award passed by the Tribunal reveals that the Tribunal considering the disability suffered by the claimant, in that the right limb has been amputated has rightly fixed the disability at 80% taking consideration the evidence of the doctor P.W.2, who had issued the disability certificate assessing the disability suffered by the claimant at 80%. For arriving at the compensation to be awarded towards loss of



earning power, the Tribunal has fixed the monthly income at Rs.5,000/- and adopting multiplier method and fixing multiplier of 11, quantified the compensation at Rs.5,28,000/=. Though it is the contention of the learned counsel for the appellant that the compensation on this head is on the higher side, however, taking into consideration the nature of injuries suffered, the period of treatment, the impact of injury on the future life of the claimant, this Court is of the considered opinion that the compensation awarded cannot be said to be excessive and, accordingly, the same is confirmed.

6. Insofar as the compensation awarded under the other heads are concerned, a perusal of the award reveals that the amount awarded under other heads like Loss of amenities, Pain and Suffering, Disfigurement have been awarded conservatively by the Tribunal keeping in mind the injuries sustained by the claimant. Therefore, the said compensation also does not warrant interference.

7. In the result, this Civil Miscellaneous Appeal is dismissed, confirming the Judgement and Decree dated 14.07.2016, made in M.C.O.P.No.1823 of 2009, on the file of Motor Accident Claims Tribunal, III Court of Small Causes, Chennai. No costs. Consequently, connected Miscellaneous Petition is closed.

8. The Transport Corporation is directed to deposit the amount of compensation, along with interest 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, the Tribunal shall transfer the same directly to the bank account of the claimant through RTGS, within a period of two weeks thereafter.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

arr/GLN
To

1. The Motor Accident Claims Tribunal,
(in the III Court of Small Causes), Chennai.

+1cc to Mr.S.Sairaman, Advocate, S.R.No.9875

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mr(co)
cs/15/03/18