IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:08.08.2017

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THE HONOURABLE Dr.JUSTICE S.VIMALA

C.M.A.No.2630 of 2017

The Managing Director,
State Express Transport Corporation Ltd.,
rep.by Managing Director, Pallavan Salai,
Chennai - 2. ..Appellant/Respondent

/Vs/

K.Balu ..Respondent/Petitioner

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 15.09.2003 made in M.A.C.T.O.P.No.173 of 2000 on the file of the Motor Accidents Claims Tribunal (III Judge, Court of Small Causes) at Chennai.

For Appellant : Mr.M.Krishnamoorthy

JUDGMENT

The claimant, Balu, aged 25 years, Photographer by profession, working at Santhi Studio & Videos and earning a sum of Rs.5,000/- per month, suffered injuries in the accident that happened on 8.12.98. Therefore, he filed a claim petition in O.P.No.173 of 2000 claiming a sum of Rs.1,25,000/-.

2. The Tribunal, considering the oral and documentary evidence, passed a award in a sum of Rs.56,000/- under the following break-up details:

Loss of income	:	Rs. 10,000/-
Transport expenses	:	Rs. 1,000/-
Extra nourishment	:	Rs. 2,000/-
Medical expenses	:	Rs. 3,000/-
Pain and suffering	:	Rs. 5,000/-
Disability	:	Rs. 25,000/-
Loss of earning capacity	:	Rs. 10,000/-
Total	:	Rs. 56,000/-

3. Challenging the award as excessive and disproportionate, the Transport Corporation has filed this appeal.

4. The learned counsel appearing for the appellant submits that the award is excessive, considering the fact that there was only fracture of two fingers in the left hand. The percentage of disability assessed by the Doctor at 25% ought not to have been accepted by the Tribunal. It is further submitted that when disablement compensation has been awarded by the Tribunal, award of compensation under the head 'loss of earning capacity' is not sustainable.

5. Though contentions, as stated above, have been raised, however, the same needs to be tested on the basis of the reasonings given by the Tribunal.

6. The claimant was examined as P.W.1 and the doctor, who treated the claimant, was examined as P.W.2. The Doctor, P.W.2, has spoken about the disablement suffered by the claimant and has assessed the disablement at 25%. Based on the deposition of the doctor and the documentary evidence, viz., the x-ray and other medical records, the Tribunal has come to the conclusion that it would not have been possible for the claimant to attend to his employment for a period of atleast 6 months and based on the said reasoning the Tribunal has awarded compensation under the head 'loss of income' for a period of six months. The Tribunal has not awarded any compensation for 'loss of enjoyment of amenities'. Even assuming that ' loss of income' awarded is unwarranted in the absence of claim, this Court feels that the said amount of Rs.10,000/- awarded under the head 'loss of income' shall stand substituted to the head 'loss of enjoyment of amenities'. Accordingly, while deleting the compensation in a sum of Rs.10,000/- awarded under the head 'loss of income', a sum of Rs.10,000/- is awarded under the head 'loss of enjoyment of amenities'.

7. It is further borne out by record that the doctor, P.W.2, has assessed the disability at 25%. The Tribunal has considered the nature of injury and the period of treatment undergone by the claimant and adopting the method of awarding compensation on the basis of per percentage of disability, on a very conservative basis, has awarded Rs.1,000/= per percentage of disability and quantified the compensation at Rs.25,000/-. The above compensation awarded by the Tribunal, in the considered opinion of this Court, cannot be said to be excessive or unreasonable. Excessive or unreasonable award should be such an amount that shocks the conscience of the Court. An award of Rs.25,000/= or Rs.10,000/= for disability and loss of earning, could, in no way, be termed as excessive or unreasonable. Similarly, the award under the heads 'pain & suffering',

'medical expenses' and 'extra nourishment' at Rs.5,000/-, Rs.3,000/- and Rs.1,000/- cannot be said to be excessive or disproportionate.

8. For the reasons stated above, the award, even in the year 2003, cannot be termed to be excessive or unreasonable, more so the claimant would be receiving the amount only in the year 2017 and keeping in mind the money value and the escalation in the prices of various commodities, the compensation awarded is not liable to be interfered with.

9. There being no merits in the appeal, the same is dismissed. However, there shall be no order as to costs.

10. The appellant/Transport Corporation is directed to deposit the entire award amount along with interest at 9% per annum from the date of petition till the date of deposit, less the amount, if any, already deposited, to the credit of MCOP No.173/2000 on the file of the Motor Accident Claims Tribunal (III Small Causes Court), Chennai, 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

s/d-
Assistant Registrar(CS VII)

True Copy

Sub-Assistant Registrar

sms/kv/GLN
To
1. The Presiding officer
Motor Accidents Claims Tribunal
(III Judge, Court of Small Causes)
Chennai.

2. The Section Officer
VR Section,
High Court, Madras.

MP(CO)
SP(06/03/2018)