

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:04.09.2017

CORAM

THE HONOURABLE Dr.JUSTICE S.VIMALA

C.M.A.No.2746 of 2017

and

C.M.P. NOS. 15486 to 15488 of 2017

The Managing Director,  
Tamil Nadu State Transport Corporation  
Limited, (Salem Division II),  
Bharathipuram,  
Dharmapuri - 636 705. ... Appellant

/Vs/

1.P.Vadivelu  
2.T.Mohan  
3.United India Insurance Company Limited,  
67, Trichy Main Road,  
Salem - 1. ... Respondents

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 26.04.2002 made in M.C.O.P.No.67 of 1993 on the file of the Motor Accidents Claims Tribunal, (Additional District Court) Dharmapuri.

For Appellant : Mr.S.V.Vasantha Kumar

JUDGMENT

The claimant, Vadivelu, aged 39 years, working as Assistant Executive Engineer in Erode Municipality, suffered an accident on 25.12.1992. The claimant suffered injuries which led to permanent disablement, loss of earning capacity and other losses. Therefore, the claimant filed the claim petition for compensation claiming a sum of Rs.2,00,000/- as compensation.

2. The Tribunal, on consideration of oral and documentary evidence, passed an award for a sum of Rs.1,21,000/- under the following heads :

|                    |                    |
|--------------------|--------------------|
| For disablement    | : Rs.82,500 . 00   |
| Medical expenses   | : Rs.25,000 . 00   |
| Pain and suffering | : Rs. 9,500 . 00   |
| Extra Nourishment  | : Rs. 4,000 . 00   |
|                    | -----              |
| Total              | : Rs.1,21,000 . 00 |
|                    | -----              |

Challenging the award as excessive and disproportionate, the transport corporation has filed this appeal.

3. It is the main contention of the learned counsel for the appellant that the Tribunal ought not to have awarded disablement compensation at Rs.82,500/- and medical expenses at Rs.25,000/- when no documents have been marked to prove the same. It is specifically pointed out that the Tribunal ought not to have relied upon Ex.P2 without examining the author of the document and so also Exs.A-4 to A-6, which are medical bills without examining the author of the documents for awarding the above compensation. It is also pointed that the Tribunal ought not to have relied upon the evidence of the Doctor especially when he has no personal knowledge regarding the treatment given to the claimant as he is not a doctor, who was in charge of the clinic at any point of time.

4. This Court gave its anxious consideration to the contention advanced by the learned counsel for the appellant and perused the materials available on record as also the finding arrived at by the Tribunal.

5. Though a ground has been raised relating to negligence of the driver of the car, which was also involved in the accident, however at the time of hearing the appeal, learned counsel for the appellant restricted his argument to the excessiveness of the award and, therefore, the negligence aspect is not being gone into by this Court.

6. According to the claimant, he was aged 39 years and he was earning a sum of Rs.5,000/- p.m., He was employed as Assistant Executive Engineer at Erode Municipality. Dr.Manoharan, was examined as PW8, who in his evidence has deposed that the claimant suffered fracture and surgery was performed and, thereby, there is restriction in movement to the extent of 40%, which creates difficulty for the claimant to stand for a long time. The doctor has certified the disablement at 30%. Medical bills have been produced to the extent of Rs.18,000/- apart from a claim made for future medical expenses.

7. The ground, on which, compensation is awarded and the basic parameters adopted in making the calculation, has not been properly explained by the Tribunal. However, having regard to the nature of injury, the period of treatment, the percentage of disability and the impact on the day-to-day living of the claimant would justify that the compensation awarded is just and reasonable.

8. Though it is not clear from the award whether the amount of Rs.82,500/= has been awarded towards disablement compensation or it is awarded towards the loss of earning capacity, however, the overall facts and circumstances of the case justify the compensation of Rs.82,500/= awarded in

respect of the injuries and the consequent difficulties faced by the claimant. Therefore, this Court is of the considered view that no interference is called for with the compensation of Rs.82,500/-.

9. Similarly, medical expenses has been awarded in a sum of Rs.25,000/-, which also cannot be said to be unreasonable, keeping in mind the nature of injuries suffered and the surgery performed on the claimant. Definitely the claimant would have undergone pain and suffering for which only a paltry amount has been granted. With regard to extra nourishment also, only a very meagre amount has been granted. Therefore, the said compensation does not call for interference.

10. It is to be pointed out that though the claimant has suffered injuries and has underwent surgery, however, curiously no compensation has been awarded by the Tribunal towards loss of enjoyment of amenities, cost of attendant and transport expenses. Therefore, it cannot be said that the compensation awarded is excessive. Even if it is presumed that the compensation of Rs.82,500/- awarded towards disability is on the higher side, the Tribunal not having awarded any compensation towards loss of enjoyment of amenities, cost of attendant and transport expenses, any excess award on the head disability can very well be transposed to these heads. Therefore, in the considered view of this Court, the compensation awarded by the Tribunal is just and reasonable, though the itemization of the compensation is not harmoniously done.

11. For the reasons aforesaid, this appeal is liable to be dismissed and, accordingly, the same is dismissed. No costs. Consequently, connected miscellaneous petitions is closed.

12. The appellant/Transport corporation is directed to deposit the entire award amount along with interest at 9% p.a. from the date of petition till the date of deposit, as determined 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 first respondent/ claimant through RTGS within a period of two weeks thereafter.

Sd/--

Assistant Registrar(CS V)

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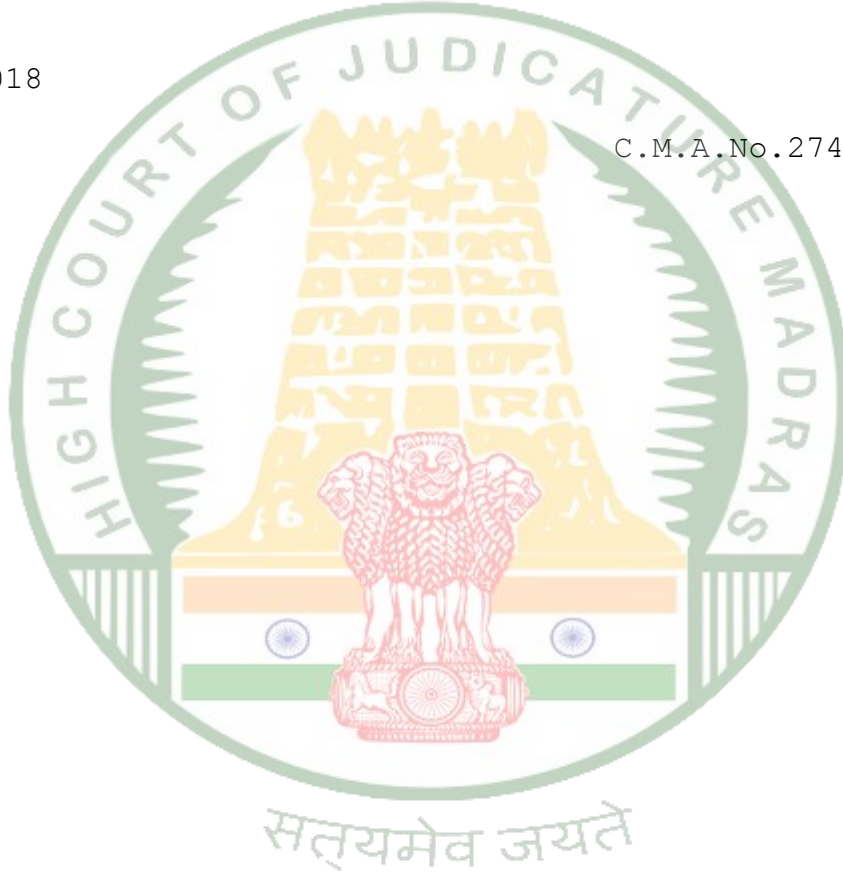
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To

- 1.The Motor Accidents Claims Tribunal,  
(Additional District Court) Dharmapuri.
2. The Section Officer, VR Section,  
High Court, Madras.

NMI (CO)  
sm:22.3.2018

C.M.A.No.2746 of 2017



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