

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.09.2017

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THE HON'BLE DR.JUSTICE S.VIMALA

C.M.A.No.2760 of 2017

and

C.M.P. No.15627 of 2017

The Managing Director,
M/s.Tamil Nadu State Transport Corporation Ltd.,
Railway Station New Road,
Kumbakonam – 612 001.

..... Appellant

Versus

Kathoon Bibi

.... Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 05.11.2015 made in M.C.O.P. No.438 of 2014 on the file of the Motor Accident Claims Tribunal, Principal District Judge, Perambalur.

For Appellant : Mr.D.Venkatachalam

For Respondent : Mr.T.Gopinathan

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JUDGMENT

The claimant A.Kathoon Bibi, aged 44, an agriculturist, earning a sum of Rs.10,000/- p.m. suffered injuries in the accident On 05.10.2013 and consequent permanent disability. The claimant was travelling as a passenger in the appellant bus bearing Registration No.TN 45-N-2091

and claiming that the claimant has suffered loss of earning capacity, the claimant has filed the claim petition claiming a sum of Rs.10,00,000/- as compensation.

2. The Tribunal on a consideration of materials placed before it, awarded a sum of Rs.4,28,894/- as compensation. Challenging the award as excessive and disproportionate, the Transport Corporation has filed this appeal.

3. It is the contention of the learned counsel for the appellant that the permanent disablement of the claimant cannot be taken as 48% as there is no basic materials for coming to the conclusion that the disability was to the extent of 48%. Yet another contention raised is that the Tribunal ought not to have awarded a sum of Rs.1,23,772/- and Rs.3,122/- on the head of medical expenses. It is specifically pointed out that the genuineness of the medical bills produced is under challenge and that it should be set aside.

4. In order to appreciate this contention, it is necessary to find out the details of injuries suffered, the employment and the age of the claimant. The claimant is a woman, aged about 44 at the time of accident, who was doing agricultural work, earning a sum of Rs.10,000/- p.m.

5. The contention is raised by the learned counsel appearing for the claimant that the claimant has suffered fracture of both bones in the right hand forearm, multiple abrasions over right shoulder and elbow and fracture of lateral condyle of right leg, tibia bone. The lateral condyle is the lateral portion of the upper extremity of tibia. It serves as the insertion Bones of the right leg. Anterior surface Right knee in extension.

6. The medical officer, after perusing of the medical sheet, medical bills, wound certificate and discharge summary, has issued the disability certificate fixing the percentage of the disablement at 48%.

7. Medical expenses based on medical bills, have been awarded as prayed for. The Tribunal has quantified the compensation for disablement at the rate of Rs.3,000/- per percentage i.e. $48 \times \text{Rs.}3000/- = \text{Rs.}1,44,000/-$ while fixing the monthly income at Rs.6000/-, the loss of income for 6 months has been estimated at Rs.36,000/- (i.e. $\text{Rs.}6000 \times 6$); estimating pain and sufferings at Rs.40,000/-; extra nourishment at Rs.40,000/-; Transportation Rs.5,000/- For damage to clothing Rs.2,000/- ;_for removal of plate in the right leg Rs.35,000/- compensation has been quantified at Rs.4,28,894/-.

8. The learned counsel for the appellant would submit that the disablement as assessed by the Doctor at 48% ought not to have been accepted by the claims Tribunal.

9. In order to appreciate the said contention, it is necessary to consider the details of the materials available on record. It is not established from the materials available on record as to how the age is incorrect.

9.1 From the nature of injury described and from the disability arising out of that injury, especially when the percentage is stated to be 48%, the Tribunal should have thought of awarding loss of earning capacity using multiplier method but instead of multiplier method, the Tribunal has awarded only disablement compensation. The fracture of both bones in the right hand forearm, multiple abrasions over right shoulder and elbow and fracture of lateral condyle of right leg, tibia bone, together would have a serious impact on the earnings as an agriculturist. The cumulative effect of the injuries over the hand and leg would also prevent the claimant from taking care of the household activities. Therefore, the Tribunal cannot be faulted with for awarding disablement compensation.

10. It is also not pointed out that in what way, the medical bills produced before the Tribunal are doubted and if the medical bills are not genuine, sufficient steps should have been taken to verify the authenticity of such bills. Unless such steps are taken, the contention before this Court that the medical bills are fake / not genuine cannot be accepted.

11. So far as the extra nourishment is concerned, as contended by the learned counsel for the appellant, the award is slightly excessive. But, the fact remains that no amount of compensation has been awarded towards loss of enjoyment of amenities and attendant charges. Therefore, the award for extra nourishment will be divided between other two heads viz., Cost of Attendant and loss of enjoyment of amenities. Under the circumstances the award passed for Rs.4,28,894/- cannot be said to be excessive.

12. In the result, the Civil Miscellaneous Appeal stands dismissed. Consequently, connected miscellaneous petition is also closed. No costs.

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Dr.S.VIMALA, J.

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13. The Transport Corporation is directed to deposit the award amount, as determined by the Claims Tribunal, which was confirmed in this Appeal, less the amount already deposited, with interest @ 7.5% p.a., from the date of petition till the date of deposit to the credit of MCOP No.438 of 2014 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 Savings bank account of the claimant through RTGS within a period of two weeks thereafter.

08.09.2017

Index : Yes/No

Internet:Yes/No

Speaking / Non speaking

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Note to office : Issue order copy by 08.09.2017**To**

- 1) Motor Accident Claims Tribunal, Principal District Judge,
Perambalur.
- 2) The Section Officer,
V.R. Section,
High Court, Madras – 104.

C.M.A.No.2760 of 2017