

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.10.2017

CORAM

THE HONOURABLE DR.JUSTICE S.VIMALA

C.M.A. NO. 3100 OF 2017

AND

C.M.P. NO. 18876 OF 2017

The Managing Director
Tamil Nadu State Transport Corporation
rep. By its Managing Director
(Villupuram III) Ltd.
Kancheepuram District.

.. Appellant

- Vs -

R.Mani

.. Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 02.01.2013, passed by the Motor Accident Claims Tribunal (V Small Causes Court), Chennai, made in MCOP No.737/2005.

For Appellant : Mr. K.J.Sivakumar

ORDER

This appeal has been filed by the Transport Corporation on the ground of contributory negligence as well as challenging the quantum of compensation awarded at Rs.1,03,500/= as against a claim for Rs.2,00,000/= made by the claimant. However, the claimant, who is the respondent herein, has not

challenged the award till date.

2. The claimant, Mani, aged about 24 years, was eking his livelihood as an auto driver earning a sum of Rs.300/- per day. The claimant met with an accident on 25.7.04 in which he sustained fracture of right leg apart from sustaining head injury. Contending that he has suffered loss of earning capacity, he laid a claim for a sum of Rs.2,00,000/= as compensation. However, after trial, on the basis of oral and documentary evidence, the Tribunal awarded a sum of Rs.1,03,500/-, the breakup of which are as hereunder :-

Loss of earning	:	Rs. 10,000/-
Transport to Hospital	:	Rs. 2,000/-
Extra Nourishment	:	Rs. 1,000/-
Damage to Clothes	:	Rs. 500/-
Pain & Suffering	:	Rs. 10,000/-
Disability at 40% at Rs.2000/- per Percentage	:	Rs. 80,000/-
Total Compensation	:	Rs.1,03,500/-

The present appeal has been filed by the Transport Corporation challenging the above award as exorbitant and non-consideration of contributory negligence on the part of the claimant.

3. Heard the learned counsel appearing for the appellant and perused the materials available on record as also the findings rendered by the Tribunal.

4. So far as the contention relating to negligence is concerned, the Tribunal has taken note of the fact that the driver of the bus has not been examined. Further, no proper explanation with regard to the non-examination of the driver has been given by the appellant/Transport Corporation. It is only the conductor, who has been examined on the side of the respondent, though the FIR has been registered against the driver of the bus. Therefore, accepting the evidence of the injured claimant, viz., P.W.1 and further taking into account the non-examination of the driver of the bus, the Tribunal has rightly come to the conclusion that the negligence is only on the part of the driver of the bus belonging to the appellant/Transport Corporation. The findings recorded by the Tribunal on the above aspect, being cogent and convincing and there being no contra materials placed either before the trial court or before this Court, this Court feels that no interference is warranted with the well considered finding of the Tribunal on the aspect of negligence.

5. Insofar as the quantum awarded as compensation is concerned, the Tribunal has taken note of the discharge summary, Ex.P-2, which evidences that the claimant suffered fracture to the shaft of the right femur. Further it

evidences that the claimant was admitted as inpatient from 25.7.04 to 29.7.04 and that the claimant underwent surgery on 3.8.04 during which time biological plating was done, which was, thereafter, removed. It is also further evident from the records that the claimant was under continuous medical supervision for several months and that the doctor assessed his disability at 40%.

6. The evidence of the doctor shows that the claimant suffered a fracture to the thigh bone, thereby causing 40% displacement. The above evidence categorically goes to show that the above fracture would certainly affect the free movement of the claimant and, thereby, affect the earning capacity of the claimant. Though the Tribunal should have adopted the multiplier method for quantification of the loss of earning, however, has chosen to award disability compensation on the basis of percentage and has awarded Rs.2,000/= per percentage of disability working in total to Rs.80,000/= for 40% disability. Further a modest amount of Rs.10,000/= has been awarded towards pain and suffering. Even on the other heads, very meagre amounts have been awarded as compensation. No appeal has been filed by the claimant for enhancement of compensation.

7. On an overall consideration of the entire materials available on record, this Court is of the considered opinion that the amount of Rs.1,03,500/= awarded

as compensation, could, by no stretch of imagination, be termed as exorbitant or unreasonable, warranting interference at the hands of this Court.

8. In the result, this civil miscellaneous appeal is dismissed confirming the judgment and decree dated 02.01.2013, passed by the Motor Accident Claims Tribunal (V Small Causes Court), Chennai, made in MCOP No.737/2005. Consequently, connected miscellaneous petition is also dismissed. However, in the circumstances of the case, there shall be no order as to costs.

25.10.2017

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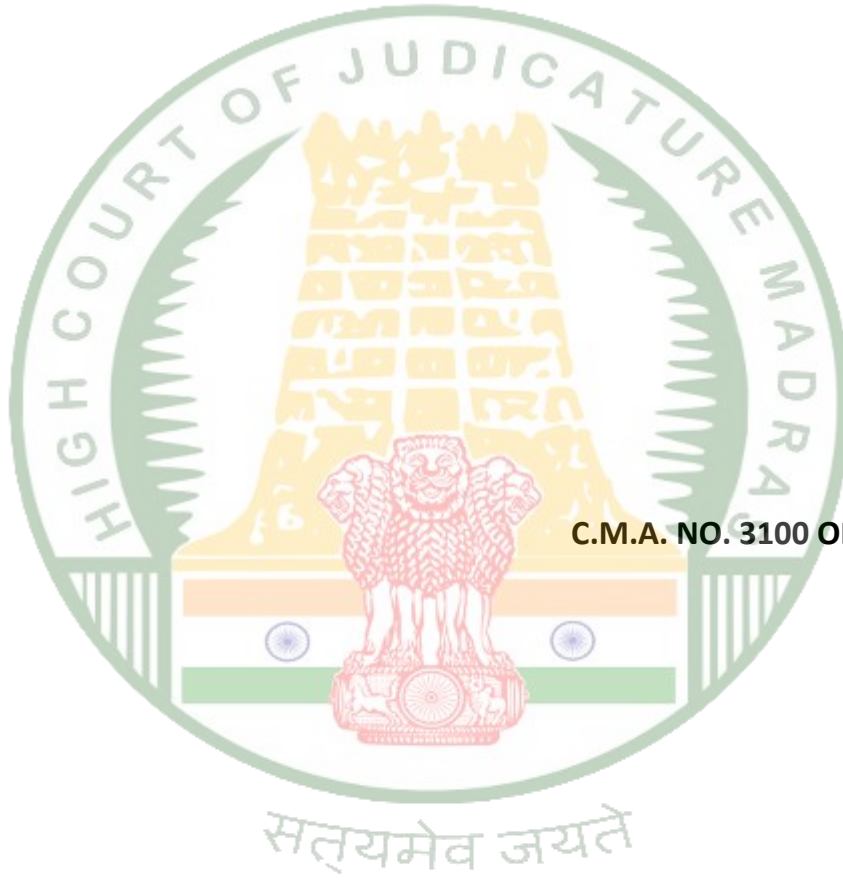
To

The Registrar
Motor Accident Claims Tribunal
(V Court of Small Causes)
Chennai.

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DR. S.VIMALA, J.

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