IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2017

CORAM:

THE HON'BLE Dr. JUSTICE S.VIMALA

C.M.A.No.3400 of 2017
& CMP No.21551 of 2017

The Managing Director,
Tamil Nadu State Transport Corporation,
(Kumbakonam Division - I) Limited,
Kumbakonam ... Appellant/Respondent

..vs..

K.Prabhakaran ... Respondent/Petitioner

Appeal filed under Section 173 of Motor Vehicles Act 1988, against the judgment and decree, dated 12.04.2016 made in M.C.O.P.No.630 of 2014 on the file of the Motor Accident Claims Tribunal, I Additional Subordinate Judge, Cuddalore.

For Appellant : Mr. D.Venkatachalam

J U D G M E N T

The application to condone the delay of 53 days in filing the above Appeal was considered along with the merits of the matter. Though the delay was in filing, considering the merits of the matter, which does not require any notice to be issued to the respondent, the matter was disposed of on merits, after condoning the delay.

2. The claimant, K.Prabhakaran, aged 28, a supplier of building material, earning a sum of Rs.15,000/- per month, met with an accident on 25.12.2013. It is the claim of the claimant that when he was riding his motorcycle from Sirkali to Karaikal road, the vehicle belonging to the appellant, came in a rash and negligent manner and hit against him. Therefore, the claimant made a claim for a sum of Rs.10,00,000/-. As against which the Tribunal has passed an award for a sum of Rs.7,33,700/-. Challenging the award as highly excessive, the Transport Corporation has filed this Appeal.

3. The main contention raised by the learned counsel appearing for the appellant / Transport Corporation is that the Tribunal ought not to have adopted the multiplier method of quantification, while assessing the loss of earning capacity and that it is not the fit case to adopt the multiplier method. Yet

another contention is that the disability would not affect the earning capacity of the claimant, as no physical work is involved in the profession alleged. On no other point, the Appeal has been argued.

4. The contention raised by the learned counsel for the appellant / Transport Corporation requires the perusal of the details of the injury suffered, nature of the treatment given and the ultimate impact of the injury upon earning capacity of the injured.

5. The claimant has suffered fracture of thigh bone in the right leg. For the fracture of the thigh bone, surgery has been done by adopting interlocking nail method. Thereafter, split skin grafting has been done. The claimant also suffered scar on account of contracture. There was Post Operative Stiffness Right Knee, apart from deformity in leg. The Doctor has certified the physical disability at 50%. The Tribunal has rightly considered the functional disability, considering the nature of the job.

6. So far as the nature of job is concerned, it is stated that the claimant is the supplier of building material. The Transport Corporation / appellant has taken a view that for the supplier of building material, there is no need to move around and sitting in an Air Conditioned hall, the claimant can supply the material, forgetting the fact that for the supplier, it involves extensive travel to find out, where the materials would be available at low cost and how the material should be supplied at the reasonable rate to gain market. The very fact that the claimant is the building material supplier cannot lead to a conclusion that the said job does not require any travelling.

7. The Tribunal has rightly relied upon several decisions of the Supreme Court as well as this Court and has given a finding that the injury would have serious impact upon the earning capacity. Even though the disability is 50%, the Tribunal has taken the functional disability only at 35% and adopting the multiplier of 17 and fixing the monthly income at Rs.6,000/-, the Tribunal has quantified the compensation.

8. The further details of the award passed would go to show that for the future medical expenses, a sum of Rs.50,000/- has been awarded. The evidence reveals that there is fixation of implant inside the leg, which may require removal at the future point of time. May be, considering that, the future medical expenses should have been awarded. The award under other heads, including extra nourishment, transport expenses and cost of attendant cannot be said to be excessive. The medial expenses awarded at Rs.99,300/- are supported by medical bills.

Therefore, the total amount of compensation awarded by the Tribunal at Rs.7,33,700/- cannot be said to be excessive.

9. In view of the above reasonings, the Civil Miscellaneous Appeal has no merits and the Appeal is dismissed. No costs. Consequently, the connected CMP is closed.

10. The appellant / Transport Corporation shall deposit the amount of compensation, as awarded by the Claims Tribunal, if not deposited already, 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 said sum to the Savings Bank Account to the claimant / respondent, through RTGS.

Sd/-
Asst.Registrar (CS V )

/true copy/

Sub Asst. Registrar

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To
1. The Motor Accident Claims Tribunal, I Additional Subordinate Judge, Cuddalore.

2. The Section Officer, V.R.Section, Madras High Court,
Chennai 104

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