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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.02.2017

CORAM:

THE HONOURABLE Dr. JUSTICE S.VIMALA

C.M.A.No.415 of 2017

and C.M.P.No.2867 of 2017

The Managing Director,
Tamil Nadu State Transport Corporation
(Coimbatore Division-I) Ltd.,
Mettupalayam Road,
Coimbatore.

... Appellant / 2nd Respondent

versus

1. Basheerjadhin Madhani

... 1st respondent/Petitioner

2. C.Perungam

... 2nd respondent/1st

respondent

(R2 is given up)

Prayer : This Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 18.07.2002 made in M.C.O.P.No.417 of 2001 on the file of the Motor Accident Claims Tribunal (Additional District cum Sessions Judge, Fast Track Court No.3), Tharapuram.

For Appellant

: Mr.G.Munirathnam

For R1

: Mr.Ma.P.Thangavel

JUDGMENT

The claimant, Basheerjadhin Madhani, aged about 50 years, working as a Watch Mechanic, earning a sum of Rs.2,000/- per month, met with an accident on 01.09.1998 and sustained injuries, in respect of which, he filed a claim petition before the Motor Accident Claims Tribunal (Additional District cum Sessions Judge, Fast Track Court No.3), Tharapuram, claiming compensation of Rs.4,00,000/-.

2. The Tribunal, after considering the oral and documentary evidence, awarded a sum of Rs.1,75,284/- as compensation, the break-up details of which are as under:

Pain and sufferings	-	Rs.	15,000.00
Loss of income for 10 months	-	Rs.	20,000.00
Disability			
(Rs.2,000 x 12 x 5 x 55/100)	-	Rs.	66,000.00
Medical expenses as per bills	-	Rs.	40,284.00
Future Medical expenses	-	Rs.	20,000.00

Total - Rs.1,75,284.00



Challenging the quantum of compensation as excessive, the Transport Corporation has filed this appeal.

3. Though very many grounds have been raised in the appeal, however, at the time of argument, the learned counsel for the appellant has restricted his argument to the quantum of compensation and, therefore, this Court is not venturing into the other grounds raised by the appellant.

4. The learned counsel appearing for the appellant Transport Corporation submitted that though P.W.2 has been examined to speak about the disability of the claimant and Ex.A10-Disability certificate, however, the said disability certificate, Ex.A-10 has not been issued by P.W.2. Therefore, it is submitted that the evidence of P.W.2, who has not treated the injured cannot be relied on and, relying on the said evidence is not justifiable. Furthermore, the author of the medical records having not been examined, the compensation awarded under the head medical expenses are also exorbitant. Therefore, the compensation awarded under the head Medical Expenses and other heads are disproportionate. Hence, the same has to be reduced.

5. The learned counsel for the first respondent submitted that the compensation awarded by the Tribunal is justifiable and it need not be called for any interference.

6. Though it is the contention of the learned counsel for the appellant that the doctor, who issued Ex.A-10 has not been examined, but P.W.2 has been examined to speak about the disability, the fact remains that P.W.2 has spoken about the disability based on the evidence available on record. It is to be mentioned that P.W.2 is a qualified medical practitioner, who can speak about the disability after looking into the records. The injuries sustained by the claimant are available on record, so also the disability certificate. Therefore, it would not have been impossible for P.W.2 to speak about the injuries and the resultant disability. Further, it is the evidence of P.W.2 that he has examined the claimant and no evidence to the contra has been elicited on the side of the appellant. Therefore, the contention that the reliance placed by the Tribunal on the evidence of P.W.2 is wrong cannot be sustained and, accordingly, the same is rejected.

7. A perusal of the award passed by the Tribunal reveals that it was the case of the claimant that the backside wheel ran over his left hip and therefore, he sustained fracture of the left hip bone and is paralyzed. The Doctor examined the injured and certified the disability at 55%. The examination of the accident register copy revealed that injuries are over the upper part of left thigh portion and right thigh portion. Ex.P12-treatment records of the Coimbatore Medical College and



Hospital has been filed, wherein, it has been stated that on 01.09.1998, the claimant has been discharged from hospital against the medical advice. P.W.2, Doctor, has deposed that the claimant has sustained fracture over the hip bone and during the period of treatment, the claimant suffered from jaundice and he was not in a position to move and therefore, he had become immobile. Later on, he had been admitted in Coimbatore PSG Hospital on 12.09.1998 and he has taken treatment till 02.03.1999, during which, his lower legs remained immobile. Under anesthesia, he has been treated for fracture in the hip bone and continuously he had been under treatment for a period of five months i.e., from 01.09.1998 to 03.02.1999.

8. Considering the above said facts, the Tribunal has fixed the disability of the claimant at 55%. There being no proof for income of the claimant, the Tribunal has fixed the income of the claimant at Rs.2,000/-, as claimed by the claimant and adopting multiplier of '5', awarded disablement compensation at Rs.66,000/-. On a careful perusal of the entire materials available on record, the income fixed at Rs.2,000/- and the multiplier adopted are just and reasonable and requires no interference.

9. Considering the injuries sustained and period of treatment, the Tribunal has held that the claimant would not be able to go to work for at least 10 months and hence, awarded a sum of Rs.20,000/- towards loss of income for 10 months. Considering the medical bills produced on the side of the claimant, the Tribunal has awarded a sum of Rs.40,284.31p, based on the bills.

10. P.W.2-doctor deposed that due to injuries sustained by the claimant, he would have to undergo surgery in future and considering the same, the Tribunal has awarded a sum of Rs.20,000/- towards future medical expenses. The Tribunal has also awarded a sum of Rs.15,000/- towards pain and suffering.

11. From the above perusal of the award passed by the Tribunal, it is evident that the Tribunal, considering the evidence of P.W.2 and also considering the nature of injuries and period of treatment and also considering the medical records produced by the claimants, awarded compensation, which is just and reasonable. The Tribunal has applied its mind to the case on hand and has awarded compensation, which cannot be termed to be excessive.

12. Hence, this Court is of the view that the award passed by the Tribunal does not require any interference and the same is liable to be confirmed.

13. Accordingly, the Civil Miscellaneous Appeal is



dismissed, confirming the award dated 18.07.2002 passed in M.C.O.P.No.417 of 2001 by the Motor Accident Claims Tribunal (Additional District cum Sessions Judge, Fast Track Court No.3), Tharapuram. No costs. Consequently, connected miscellaneous petition is closed.

14. The Transport Corporation is directed to deposit the entire amount of compensation as awarded by the Tribunal, less the amount, if any, already deposited, along with interest at the rate of 9% p.a. from the date of petition till the date of deposit, 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 shall transfer the same directly to the Bank Account of the claimant through RTGS, within a period of two weeks thereafter.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

Ogy/GLN

To

1. The Motor Accident Claims Tribunal
(Additional District cum Sessions Judge,
Fast Track Court No.3), Tharapuram.
2. The Section Officer,
V.R.Section,
High Court of Madras,
Chennai.

C.M.A.No.415 of 2017

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