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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.12.2016

CORAM:

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

C.M.A(MD)No.121 of 2016

and

C.M.P(MD)No.2015 of 2016

The Managing Director,
Tamil Nadu State Transport Corporation,
Kumbakonam Taluk,
Thanjavur District.

... Appellant/Respondent

Vs.

Minor Vignesh
Represented by his father & Guardian
Jothivel

... Respondent/Petitioner

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree passed in M.C.O.P.No. 472 of 2012, dated 21.04.2015 on the file of the Motor Accident Claims Tribunal/Special Sub-Court, Thanjavur.

For Appellant : Mr.P.Prabhakaran
For Respondent : Mr.G.Kandavadivelan

JUDGMENT

This Civil Miscellaneous Appeal has been preferred by the appellant-Transport Corporation against the award of Rs. 2,29,000/- (Rupees Two Lakhs Twenty Nine Thousand only) as compensation for the injuries sustained by the respondent in the accident occurred on 09.12.2011. When the respondent was allegedly walking on the road margin, the bus belonging to the appellant-Transport Corporation driven in rash and negligent manner hit him and caused injuries.

2. Mr.P.Prabhakaran, learned Counsel appearing for the appellant would submit that the loss of income of Rs.20,000/- (Rupees Twenty Thousand only) given to the parents for the period in which the respondent had taken treatment was unwarranted. Moreover, he would submit that in the other heads, higher amount has been given. Hence, he seeks for reduction of the award amount.

3. It is seen from the records that the respondent/claimant sustained injury and that too, a fracture in the right thigh because of the accident occurred on 09.12.2011.



4. Though the appellant contended before the Tribunal that the respondent tried to board the bus through the front exit and fell down due to loss of balance, there was no evidence adduced except the evidence of the driver of the bus. Whereas the respondent produced the documents under Exs.P1 to P7, especially, Ex.P1- First Information Report in Crime No.214 of 2011 filed against the driver of the bus under Sections 279 and 337 IPC and the Tribunal rightly came to the conclusion that the accident occurred because of the rash and negligent driving of the driver of the appellant-Transport Corporation bus and therefore, the finding of the Tribunal regarding the negligence is confirmed.

5. The claimant was a minor at the time of the accident and because of the accident only, the fracture has been suffered on the right thigh as proved by Exs.P4 to P7. The Doctor-PW2 determined the disability based on examining the victim at 39% as the bone became bent and there is substantial pain affecting the normal movement of the claimant. However, the Tribunal determined the disability at 39% and awarded a sum of Rs.3,000/- for 1% disability, relying upon the judgment of this Court in the case of National Insurance Company Ltd., rep.by the Branch Manager, Thiruvengadasamy Chetty Street, Erode -vs- G.Ramesh and others reported in 2013(2)TN MAC 583.

6. Taking into consideration the fact that the accident occurred on 09.12.2011 and the Tribunal awarded a sum of Rs. 3,000/- for 1% disability, that too, for the disability sustained by the minor claimant, the award of the Tribunal to the tune of Rs.1,05,000/- is confirmed. Similarly, the amounts awarded under various heads, namely, a sum of Rs.8,200/- towards care taker; a sum of Rs.30,000/- towards loss of amenities; a sum of Rs.30,000/- towards pain and suffering; a sum of Rs. 15,000/- towards transportation charges and a sum of Rs.20,800/- towards extra nourishment, are reasonable and they are confirmed.

7. Though it is contended by the learned Counsel for the appellant that Rs.20,000/- awarded towards loss of income for the parents is unwarranted, when a minor boy sustained injury and he has been hospitalized, necessarily the parents have to look after him leaving their works. The period spent by the parents along with the minor boy during the treatment has to be taken into consideration and accordingly, the compensation was rightly given by the Tribunal. Therefore, Rs.20,000/- awarded in this connection cannot be interfered with. The rate of interest 7.5% remains unwarranted.

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8. Hence, this Civil Miscellaneous Appeal is dismissed, directing appellant-Transport Corporation to transfer the



compensation amount to the personal Savings Bank Account Number of the respondent/claimant by RTGS/NEFT on or before 10.02.2017, failing which, the Chairman cum Managing Director as well as the Chief Financial Advisor of the appellant-Transport Corporation shall appear before this Court on 11.02.2017. No costs.

For reporting compliance, list the matter on 11.02.2017.

Sd/-

Assistant Registrar (AS)

/True Copy/

Sub Assistant Registrar

To

- 1.The Motor Accident Claims Tribunal/
Special Sub-Judge,
Thanjavur.
- 2.The Chairman cum Managing Director,
T.N.S.T.C.,
Kumbakonam Taluk,
Tanjore Dist.
- 3.The Chief Financial Advisor of the
Tamil Nadu State Transport Corporation,
Kumbakonam Taluk,
Tanjore District.

+1 cc to Mr.P.PRABHAKARAN, Advocate, SR.79885

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