



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.10.2018

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.3503 of 2008

Veni

... Appellant/Claimant

Vs

The Managing Director,
Tamilnadu State Transport Corporation Ltd,
Villupuram.

... Respondent/Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the order and judgment dated 04.02.2008 in MCOP.No.118 of 2005 on the file of Motor Accident Claims Tribunal, Principal Subordinate Court, Thiruvannamalai.

For Appellant : Mrs.M.Malar

For Respondent : Mr.K.J.Siva Kumar

JUDGMENT

The instant appeal has been filed by the claimant seeking enhancement of compensation under the impugned Award dated 04.02.2008 passed by the Motor Accident Claims Tribunal, Principal Subordinate Court, Thiruvannamalai in MCOP.No.118 of 2005.

The brief facts leading to the filing of the instant appeal are as follows:

2. The Appellant sustained injuries on 28.07.2004 as a result of an accident caused by a bus bearing Registration No.TN32/N1469 owned by the respondent Transport Corporation. The Appellant preferred a claim before the Motor Accident Claims Tribunal in M.C.O.P.No.118 of 2008 seeking a compensation of Rs.1,00,000/-. The Motor Accident Claims Tribunal by its Award, dated 04.02.2008 passed in M.C.O.P.No.118 of 2008, directed the respondent to pay the Appellant a sum of Rs.7,500/- together with interest at the rate of 7.5% per annum from the date of claim till the date of realisation.



3. Aggrieved by the quantum of compensation awarded by the Tribunal, the instant appeal has been filed by the claimant seeking enhancement of compensation.

4. Heard, Mrs. Malar, learned counsel for the Appellant and Mr. K. J. Sivakumar, learned counsel for the respondent.

5. According to the learned counsel for the Appellant, the compensation awarded by the Tribunal under the impugned Award to the Appellant is an inadequate compensation. According to the learned counsel for the Appellant, even though the disability of the Appellant was assessed at 30% as per Ex.P6, the Tribunal did not consider the same, but instead, has awarded only a lump sum compensation of Rs.7,500/- towards Mental agony, Pain and suffering and Medical expenses. According to the learned counsel for the Appellant, the Appellant suffered fracture in the left leg and grievous injuries all over the body. The learned counsel for the Appellant drew the attention of this Court to the Wound certificate, Ex.P2 and a copy of the Accident register, Ex.P3 and submitted that, as seen from those documents, the injuries sustained by the Appellant are grievous in nature and therefore, according to her, the Tribunal ought to have awarded a higher compensation to the Appellant.

6. Per contra, learned counsel for the respondent Transport Corporation would submit that the compensation awarded to the Appellant under the impugned Award is a just compensation. According to the learned counsel for the respondent, the injury sustained by the Appellant is only a simple injury and no fracture was sustained by the Appellant as a result of the accident.

7. This Court, after having considered the materials available on record and after examining the impugned Award and after hearing submissions of the respective counsels and after personally seeing the Appellant in open Court, observes the following:

a) The Tribunal under the impugned Award has examined the oral and documentary evidence let in by the Appellant before the Tribunal.

b) The Wound certificate Ex.P2 does not reveal that the Appellant sustained fracture, but reveals that the Appellant suffered only lacerated injuries. The wound certificate also discloses that the accident happened on 28.07.2004 and the Appellant absconded from the hospital on 29.07.2004 and was re-admitted only on 08.09.2004. The accident register copy Ex.P3 also does not reveal that the Appellant sustained fracture as a result of the accident.



c) Based on the documentary evidence available on record, the Tribunal has observed that the interval between the date of accident i.e., 28.07.2004 and the date of X-ray i.e., 08.09.2004 creates doubt over the nature of injury itself. In the considered view of this Court, the Tribunal has rightly inferred that the Appellant claiming to have sustained fracture would not have absconded from the hospital immediately on admission, if really he had sustained any fracture. The Tribunal has also observed that the Appellant may have sustained fracture subsequent to the accident, since the claim petition was filed after a year of the accident.

d) Under the impugned Award, the Tribunal has considered the Doctor's medical prescriptions Ex.P4 dated 07.08.2004, 31.07.2004, 11.08.2004 and 20.05.2005 and has observed that it relates to some other ailments also. No documentary evidence has been produced by the Appellant before the Tribunal to show that she was treated by an Orthopaediatrician for the alleged fracture sustained by her.

e) The Tribunal after considering the wound certificate and the Accident Register copy Ex.P2 and Ex.P3 respectively has come to the right conclusion that the Appellant has not suffered 30% disability as claimed in Ex.P6.

f) This Court had also directed the Appellant to be personally present before this Court for the purpose of assessing the just compensation payable to her. As directed by this Court, the Appellant was present in Court today. This Court put few questions to her. The statement made by the Appellant before this Court today contradicts her pleadings filed before the Tribunal. The Appellant states that she suffered head injuries as a result of the accident and remained unconscious for four days, after the accident. Even though she states that she has suffered injuries in her left leg, she does not state that she suffered any fracture. But in the pleadings, as seen from the claim petition and in her oral and documentary evidence namely Wound Certificate as well as the Accident Register Copy, there is no mention of any head injury. On personally seeing the Appellant and on prima facie basis, this Court is of the considered view that the Appellant seems to be in a reasonably fit condition, now.

g) In the considered view of this Court, the Tribunal under the impugned Award has correctly assessed the compensation payable to the Appellant.



8. In the result, there is no merit in the instant Appeal. Accordingly, the Appeal is dismissed. No costs.

9. The respondent is directed to deposit the amount awarded by the Tribunal, after deducting the amount already deposited, together with interest, to the credit of MCOP.No.118 of 2005 on the file of the Motor Accident Claims Tribunal, Principal Subordinate Court Thiruvannamalai, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Appellant is premitted to withdraw the amount lying to the credit of MCOP.No.118 of 2005 by filing an appropriate application.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

kyl/nl

To

1.The Motor Accident Claims Tribunal,
Principal Subordinate Court Thiruvannamalai.

2.The Section Officer, VR Section,
Madras High Court.

+1 cc to M/s.M.Malar, Advocate Sr.No.72116
+1 cc to Mr.K.J.Sivakumar, Advocate Sr.No.71825

C.M.A.No.3503 of 2008

kyl/nl
CSL/04.12.2018