

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.01.2018

CORAM

THE HONOURABLE MR. JUSTICE R. SUBBIAH

AND

THE HONOURABLE MR. JUSTICE P.D. AUDIKESAVALU

C.M.A. No. 1361 of 2014

&

M.P. No. 1 of 2014

The Managing Director
Tamil Nadu State Transport
Corporation Limited,
(Kumbakonam Branch-II),
No.46, Railway Station Road,
Periyamilaguparai,
Trichy - 620 001. ...Appellant/Respondent

Vs.

D. Dhilipkumar ...Respondent/Petitioner

Prayer: Civil Miscellaneous Appeal as against the judgment and decree dated 02.04.2012 passed in M.C.O.P. No. 88 of 2009 by the Motor Accidents Claims Tribunal (Subordinate Judge), Attur.

For Appellant :: Mr.D. Venkatachalam

For Respondent :: Mr.V.R. Anna Gandhi

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the Transport Corporation challenging the quantum of compensation awarded by the Motor Accidents Claims Tribunal (Sub Judge), Attur, in and by award dated 02.04.2012 in M.C.O.P. No. 3446 of 2006.

2. The respondent in the appeal is the claimant before the Tribunal.

3. The case of the claimant before the Tribunal was that on 24.04.2009, when he was trying to get into the stationed bus bearing Registration No. TN-45-N-2514 through the front stair case at new Bus Stand, Perambalur at about 1.30p.m., the driver of the bus, in a rash and negligent manner started the bus suddenly, due to which the claimant was thrown out of the bus and the wheels of the bus ran over his legs, resulting in his sustaining grievous injuries. Hence, the claim petition was filed seeking compensation to the tune of Rs. 25,00,000/- and the Tribunal, on appreciation of oral and documentary evidence, awarded a sum of Rs.13,18,790/- together with interest @ 7.5% per annum from the date of petition till the date of deposit.

4. At the outset, it has to be stated that since the present appeal has been filed questioning only the quantum of compensation awarded by the Tribunal, it is not necessary for this Court to traverse into other aspects of the award.

5. In assailing the quantum of compensation awarded by the Tribunal, the contention of the learned counsel for the appellant is that the sum of Rs.6,12,000/- awarded by the Tribunal towards "Loss of Earning Capacity" by fixing the monthly income of the respondent/claimant as Rs.4000/-, the percentage of disability as 75% and adopting multiplier 17 is extremely on the higher side. Therefore, the said amount requires to be reduced. That apart, according to the learned counsel for the appellant, the Tribunal has also awarded exorbitant amounts under the other heads and passed an award for a total sum of Rs. 13,18,790/- and therefore, even the amounts awarded under the other heads, need to be scaled down.

6. Heard the submissions of the learned counsel for the respondent on the above points.

7. We have considered the rival submissions and carefully gone through the materials on record.

8. On a perusal of the award, we find that on account of the accident, the respondent/claimant suffered crush injury on his left leg, internal degloving injuries on his right and left thigh, fractures at right tibial condyle and right fibula bone. As his left leg was completely damaged, it was amputated below knee. For fracture of right tibia, he underwent surgery for fixation of plate and screws on 02.05.2009. On 12.05.2009, debridement of left thigh was done. On 21.05.2009, skin split grafting was done. On 01.06.2009, supplementary skin grafting was done. The claimant underwent totally five surgeries and he took treatment as an in-patient for about 57 days. The Doctor, who was examined as P.W.3, had spoken about the injuries suffered by the claimant and assessed the disability at 75%,

which the Tribunal had also accepted and it cannot be said to be unreasonable.

9. Further, it is seen that though the claimant had stated that he was earning a sum of Rs.20,000/- per month, by doing real estate and old iron scrap business, by supply of constructions materials like brick, sand, etc and also as an Insurance Agent, in the absence of any documentary evidence to substantiate the same, except the evidence of P.W.4, the Tribunal fixed the monthly income of the claimant as Rs.4000/-, which cannot be said to be on the higher side, considering the cost of living at present. Therefore, the sum of Rs.6,12,000/-, awarded towards "Loss of Earning Capacity" by taking the monthly income as Rs.4000/-, multiplier as 17 as per II Schedule of Motor Vehicles Act, 1988 and the disability at 75%, appears to be very reasonable.

10. Besides, the amounts awarded by the Tribunal, to the tune of Rs.50,000/- towards "Pain and Suffering"; Rs.3,14,100/-, Rs.1,28,831/- and RS.15,356/- towards "Medical Expenses" based on Exs-P4, P5 and P6 - Medical Bills, Rs.1,16,220/- based on Ex-P7 towards "Fixation of Artificial Limb", Rs.45,285/- towards "Transport Expenses", based on Ex-P9 bills; Rs.4000/- towards "Extra Nourishment", Rs.3000/- towards "Attendant Charges"; Rs.10,000/- towards "Future Medical Expenses" and Rs.20,000/- towards "Temporary Loss of Income" are all very reasonable and we do not find any infirmity in the amounts awarded under the other heads.

11. On the whole, we are of the opinion that the award of the Tribunal to the tune of Rs.13,18,790/- is just and reasonable and therefore, we are not inclined to interfere with the same. Hence, the Civil Miscellaneous Appeal fails and the same is dismissed. No costs.

12. The appellant Transport Corporation is directed to deposit the entire award amount together with interest and costs, if not already deposited, before the Tribunal, within a period of 6 weeks from the date of receipt of a copy of this order. On such deposit or if the amount is already lying in deposit, the respondent/claimant is permitted to withdraw the same. Connected M.P. is closed.

Sd/-

Assistant Registrar(CS-v)

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Sub Assistant Registrar

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TO

1. THE MOTOR ACCIDENT CLAIMS TRIBUNAL,
SUBORDINATE JUDGE, ATTUR.

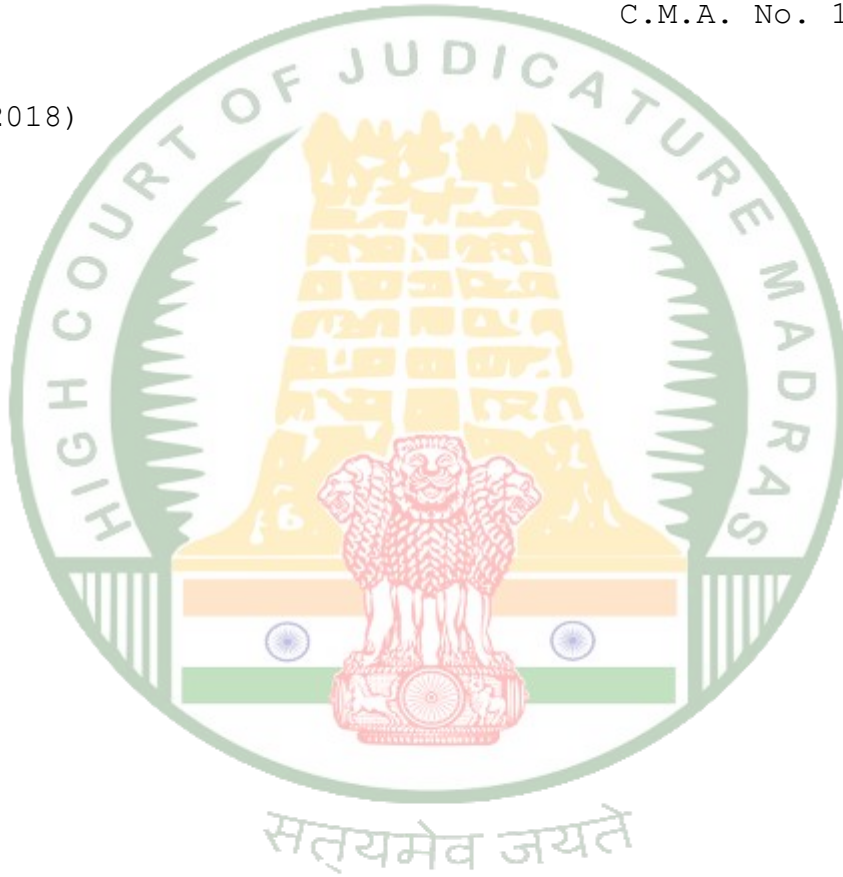
2. THE SECTION OFFICER,
V.R. SECTION, HIGH COURT, MADRAS.(2 COPIES)

+1cc to Mr.D.VENKATACHALAM, Advocate, S.R.No. 633

+1cc to Mr.V.R.ANNAGANDHI, Advocate, S.R.No. 511

C.M.A. No. 1361 of 2014

RV(CO)
TR(07/02/2018)



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