

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.12.2019

CORAM

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH
AND
THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

C.M.A.No. 3270 of 2009

D.V.Kishore

.. Appellant/Petitioner

Vs.

The Managing Director
Tamil Nadu State Transport Corporation,
Rangapuram, Vellore.

.. Respondent/Respondent

PRAYER : Appeal filed under Section 173 of the Motor Vehicles Act against the judgment and award in M.C.O.P.No.326 of 2004 dated 17.02.2006 on the file of Motor Accidents Claims Tribunal, Gudiyatham, Vellore District.

For Appellant : K.S.V.Prasad

For Respondent : K.J.Sivakumar

JUDGMENT

(Delivered by M.M.SUNDRESH., J)

This appeal has been preferred by the appellant being aggrieved over the insufficiency of the award granted by the Sub-Court in M.C.O.P.No.326 of 2004. The appellant sought for a sum of Rs.50,00,000/- as compensation whereas the Tribunal has granted only Rs.1,30,000/- as compensation.

2. There is no dispute with respect to the negligence part. Thus, we are concerned with the quantum alone. Similarly, there is no dispute with respect to the nature of injuries suffered by the appellant which is permanent amputation of the right leg. He was treated as in-patient for a period of 17 days which is inclusive of surgery conducted on him. Thereafter, he was made to walk with an artificial limb.

3. On the earlier occasion, the appellant filed an application seeking to mark additional documents. This Court, directed the Court below to mark the documents produced by the appellant and take evidence on the same. After undertaking the said exercise, the papers have been sent to this Court. It appears that the appellant marked more documents than the one produced before this Court, which have also been taken into consideration.

4. With the aforesaid documents, let us consider the submissions made.

5. The learned counsel appearing for the appellant submitted that the appellant has suffered not only physical injuries but also not given due promotion. This was for the reason that he has been transferred to some other section as he could not work in the earlier section. The Tribunal has committed an error in not considering Ex.P7 in the right perspective. Ex.P19 has to be seen along with Ex.P7 and also Ex.P25. These three documents cumulatively would show that the appellant paid a sum of Rs.3,18,731/- as early as 30.06.2005 and thereafter paid further amount towards the maintenance and replacement of the artificial limb. Apart from the same, the appellant requires continuous assistance for which he has to make payment. Therefore, taking into consideration all the aforesaid aspects, the appeal will have to be allowed.

6. The learned counsel appearing for the respondent has made three objections. The first objection is with respect to the employment of the appellant. Accordingly, it is submitted that the appellant is continuously working with the employer after the accident. There is no material to show that his salary was reduced after the accident. The second objection is with respect to the marking of more documents than the one produced before this Court. Though the third objection is with respect to the need for assistance, there is no supporting material including the evidence of Doctor, in this regard has been produced. Therefore, the appeal will have to be dismissed.

7. We may note that the award passed by the Tribunal is grossly inadequate. The Tribunal, adopted a hyper technical view in rejecting Ex.P7. When there is no dispute on fact that the appellant suffered a major injury resulting in amputation of his right leg, it is axiomatic that he has to walk only with artificial limb. To substantiate the same, the appellant marked Ex.P7. Therefore, the Tribunal ought to have accepted it especially the other documents would clearly show that the

appellant made the payment and thereafter made further payments towards the maintenance and replacement. Artificial limb cannot be used for in its entirety. Certainly, it has wear and tear. It has to be maintained apart from replacement after sufficient usage. Therefore, the appellant's treatment is continuing and recurrent one. However, the contention that the appellant has not sought to mark the other documents cannot be sustained. After all, the proceedings before the Tribunal and this Court are summary in nature.

8. We are concerned with the payment of just compensation. There is also a recording in paragraphs 7 and 9 of the order of this Court that the appellant can mark the documents in support of his contention, which he did. It is not as if the documents are not genuine. May be there is some force in the submission made by the learned counsel for the respondent that there is no material to prove the loss suffered by him in his employment or the need for continuous assistance. However, the same will not dis-entitle the appellant from getting the just compensation in the light of the discussion made above. The Tribunal has wrongly fixed the permanent disability at 60%. Furthermore, it rejected the appellant's claim for artificial limb but did not make any amount fixed for attendant charges along with future medical expenses.

9. In the light of the admitted facts, instead of fixing the amount in each heads, we are inclined to enhance the compensation from Rs.1,30,000/- to Rs.10,00,000/-. Suffice it to say that the award has been enhanced keeping in mind the various heads, namely, the physical disability, the requirement for permanent artificial limb, attendant charges and future medical expenses. Accordingly, a sum of Rs. 10,00,000/- has been fixed as compensation with 7.5% interest.

10. In the result, the Civil Miscellaneous Appeal stands allowed. No costs. Consequently, connected M.P.No.1 of 2009 is closed.

11. The respondent Transport Corporation is directed to deposit the enhanced compensation amount along with proportionate interest, less the amount if any already deposited, to the credit of M.C.O.P.No.326 of 2004 on the file of the Motor Accidents Claims Tribunal, Gudiyatham, Vellore District, within a period of eight weeks from the date of receipt of a copy of the judgment.

12. We also direct the Tribunal to transfer the entire amount deposited by way of RTGS to the bank account of the claimant within a period of three weeks from the date of deposit of the award amount. On such transfer, the claimant is entitled to withdraw the same.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

ssm

To

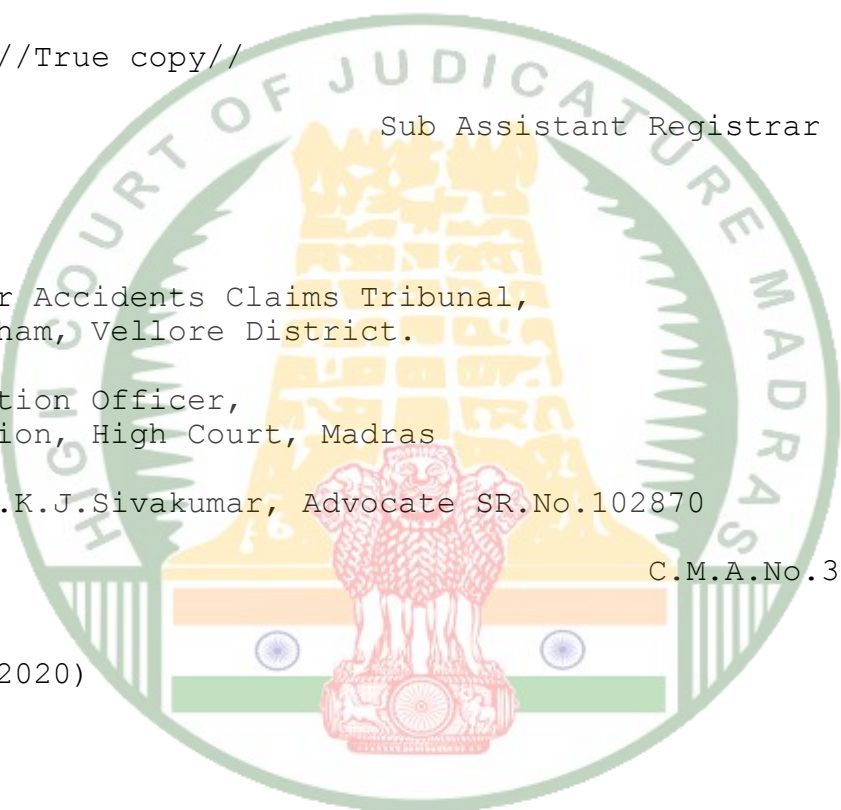
1.The Motor Accidents Claims Tribunal,
Gudiyatham, Vellore District.

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

+1cc to Mr.K.J.Sivakumar, Advocate SR.No.102870

C.M.A.No.3270 of 2009

NMI (CO)
GMY (22/07/2020)

The seal of the High Court of Madras is a circular emblem. It features a central yellow temple gopuram (tower) with a red lion capital on top. The gopuram is flanked by two green trees. The entire emblem is set against a white background with a green border. The words 'HIGH COURT OF JUDICATURE MADRAS' are written in a circular path around the emblem. Below the emblem, the Sanskrit motto 'सत्यमेव जयते' (Satyameva Jayate) is written in Devanagari script.

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