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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.04.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.421 of 2015

and

M.P.No.1 of 2015

The Managing Director,
Tamil Nadu State Transport
Corporation (Salem) Limited,
Regional Office at Bharathipuram,
Dharmapuri - 5. .. Appellant/ Respondent

Vs.

G.Senthilkumar .. Respondent/Claimant

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 13.10.2011 made in M.C.O.P.No.1134 of 2007 on the file of the Motor Accident Claims Tribunal, Additional District Court, Krishnagiri.

For Appellant : Mr.D.Venkatachalam

For Respondent : Mr.Prasanna
for Mr.Mukund R.Pandiyan

J U D G M E N T

The Civil Miscellaneous Appeal is filed by the appellant/Transport Corporation challenging the award dated 13.10.2011 made in M.C.O.P.No.1134 of 2007 on the file of the Motor Accident Claims Tribunal, Additional District Court, Krishnagiri.

2.The respondent is claimant in M.C.O.P.No.1134 of 2007 on the file of the Motor Accident Claims Tribunal, Additional District Court, Krishnagiri. He filed the said claim petition claiming a sum of Rs.9,00,000/- as compensation for the injuries sustained by him in the accident that took place on 10.04.2007. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident has occurred due



to rash and negligent driving by the driver of the bus belonging to the appellant/Transport Corporation and directed the appellant/Transport Corporation to pay a sum of Rs.3,08,912/- as compensation to the respondent. Against the said award dated 13.10.2011 made in M.C.O.P.No.1134 of 2007, the appellant-Transport Corporation has come out with the present appeal.

3.The learned counsel appearing for the appellant/Transport Corporation contended that the Tribunal ought not to have held that mere registration of FIR against the driver of the bus is not enough for holding negligence on him. The respondent/claimant has not proved that his disability affected his work. The Tribunal erred in adopting the multiplier method for awarding compensation towards loss of earning capacity. The Tribunal has also failed to consider the evidence of PW2-Doctor and the injuries sustained by the respondent would not affect his Advocate profession. No valid document was filed by the respondent to prove his income. The Tribunal has awarded higher compensation of Rs.1,30,000/- towards medical expenses without proper verification of bills. The compensation awarded by the Tribunal is excessive and prayed for setting aside the award of the Tribunal.

4.Per contra, the learned counsel appearing for the respondent/claimant contended that the Tribunal after considering both oral and documentary evidence in proper perspective, has awarded compensation which is not excessive and prayed for dismissal of the appeal.

5.Heard the learned counsel appearing for the appellant/Transport Corporation as well as the respondent and perused all the materials available on record.

6.From the materials available on record, it is seen that the respondent/claimant who had himself examined as PW1 has deposed the manner of accident. Ex.P1/FIR has been registered against the driver of the bus belonging to the appellant/Transport Corporation. The contents of Ex.P1/FIR support the evidence of PW1 with regard to accident. The appellant/Transport Corporation has examined RW1/driver of the bus to prove that the accident did not occur due to rash and negligent driving by the driver of the bus. The Tribunal held that no driver would accept their own fault for the accident and the evidence of RW1 is not acceptable and the respondent has proved that the accident has occurred only due to rash and negligent driving by the driver of the bus belonging to the appellant/Transport Corporation. There is no error in the said finding of the Tribunal warranting interference by this Court.



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7.As far as quantum of compensation is concerned, the respondent has contended that he is practicing as an Advocate and was earning a sum of Rs.20,000/- per month prior to the accident and thereafter, he could not do the work as he was doing earlier. PW2/Doctor has deposed that there was malunion of bones in the tibia bone of the leg and also there was malunion of Lombard vertebra bone by 2 degrees and due to the same, the respondent finds it difficult to climb steps, to sit and squat on floor and assessed the disability of the respondent at 35%. He referred to a Judgment of this Court reported in "(2005) ACJ 1483 in the case of United India Insurance CO. Ltd., -Vs- Velusamy and another and held that "If there is no amputation, lesser period may be adopted for ascertaining loss of income". The respondent was aged 30 years at the time of the accident. The Tribunal has applied multiplier '11' and deducted 1/3rd towards personal expenses. The Tribunal fixed the disability of the respondent at 35%, holding that the disability may vary 5% from one Doctor to another Doctor. The Tribunal has fixed monthly income of the respondent at Rs.5,000/-. The total loss of income awarded by the Tribunal is Rs.1,53,912/-. The Tribunal has awarded a sum of Rs.1,30,000/- towards medical expenses, considering Ex.P5 medical bills. In addition to that the Tribunal has awarded a sum of Rs.5,000/- each towards transportation charges and extra nourishment and the same are not excessive. The Tribunal after considering both oral and documentary evidence, has awarded total sum of Rs.3,08,912/- as compensation to the respondent. In my considered opinion, the compensation awarded by the Tribunal is just and reasonable and it does not warrant any interference by this Court.

8.In the result, this Civil Miscellaneous Appeal is dismissed and sum of Rs.3,08,912/- awarded by the Tribunal as compensation to the respondent along with interest and costs is confirmed. The appellant/Transport Corporation is directed to deposit the award amount along with interest and costs, less the amount already deposited, if any, within a period of twelve weeks from the date of receipt of a copy of this judgment. On such deposit, the respondent is permitted to withdraw the award amount, along with interest and costs, less the amount if any, already withdrawn, by filing necessary applications before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

mtl



To

The Additional District Judge,
Motor Accident Claims Tribunal,
Krishnagiri.

Copy to:
The Section Officer,
VR Section,
High Court,
Madras.

+lcc to Mr.D.Venkatachalam , Advocate SR.No. 41412

+lcc to Mr.Mukund R.Pandiyan , Advocate SR.No. 4133

C.M.A.No.421 of 2015
and

M.P.No.1 of 2015

gj

A.SK(16/10/2019)