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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.766 of 2012

and

M.P.No.1 of 2012

The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Tiruppur Branch, Tiruppur.

.... Appellant

Versus

1. Chinappan @ Krishnamoorthy

2. Devanesan

[given up]

.... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the award made in the M.C.O.P.No.403 of 2008 dated 07.04.2011 on the file of The Motor Vehicles Claims Tribunal, (FTC-II), Additional District Judge, Coimbatore.

For Appellant : Mr. V. Udayakumar

For Respondents : Mr.Ma.P. Thangavel for R1

: R2- given up

JUDGMENT

The Transport Corporation is the appellant herein, challenging the award dated 07.04.2011 passed in M.C.O.P.No.403 of 2008 on the file of the Motor Accidents Claims Tribunal, (FTC-II), Additional District Judge, Coimbatore by fixing the liability on their part to pay the compensation amount.

2.The first respondent herein is the claimant before the Tribunal. According to the claimant, on 19.07.2007 at about 5.00 p.m, when he was going near to Ayyampalayam in his Motorcycle bearing Registration No.TN-39-Q-1987, at that time, a Government



Bus bearing Registration No.TN-33-N-0989, which was driven by its driver in a rash and negligent manner, hit against the claimant's Motorcycle. In the impact, the claimant fell down on the road and sustained grievous injuries on all over his body. After the accident, the claimant was immediately taken to the Government Hospital, Coimbatore, for treatment for the injuries sustained in the said accident. A case was registered in Crime No.185 of 2007 against the driver of the bus. According to the claimant, the accident had occurred only due to rash and negligent driving of driver of the Bus. Therefore, the claimant made a claim petition in M.C.O.P.No.403 of 2008 before the Tribunal, claiming a sum of Rs.2,00,000/-.

3.The Transport Corporation has opposed the claim petition by filing a detailed counter before the Tribunal and denied the averments made in the claim petition in respect of age, occupation and income of the claimant and it is contended that due to improper driving of the claimant, the accident had occurred.

4.Before the Tribunal, on the side of the claimant, he examined himself as PW.1 and Dr.Gajendran was examined as PW.2 and seven documents were marked as Exs.P1 to P7. On the side of the Transport Corporation, neither oral nor documentary evidence was adduced.

5.Based upon the oral and documentary evidence, the Tribunal has come to the conclusion that the accident had taken place only due to rash and negligent driving of the driver of the first respondent's vehicle and the same is hereby confirmed. Upon considering the medical evidence under Ex.P6/disability certificate issued by the Doctor/PW.2, the Tribunal has fixed disability at the rate of 34% and accordingly, awarded compensation of Rs.68,000/- towards disability at rate of Rs.2,000/- per percentage. That apart, the Tribunal has awarded compensation under different heads and awarded a total sum of Rs.1,80,500/- as compensation.

6.Learned counsel for the Transport Corporation has vehemently contended that the quantum of compensation arrived at by the Tribunal is excessive and the income of the claimant fixed by the Tribunal is on the higher side.

7.Heard both sides and perused the materials available on record.

8.PW.2/Doctor Gajendren has issued Ex.P6/wound certificate and fixed the disability suffered by the claimant/victim as partial permanent disability at 34 %. It is seen from Ex.P4/discharge summary that the claimant sustained injuries on



left thigh bone and right leg has been badly damaged and operation was done at Government Hospital, Coimbatore and the second surgery was done at Mayura Hospital, where he took treatment by fixing external rod and he is unable to move freely and also there is shortage of leg by one percentage and movement of right leg has also been considerably reduced. Hence, 34% of disability fixed by the Tribunal is hereby confirmed and awarded sum of Rs.68,000/- by the Tribunal cannot said to be excessive or exorbitant. The compensation amount awarded by the Tribunal under other heads also cannot be said to be on the higher side. After going through the award passed by the Tribunal, I find some justification in the compensation awarded by the Tribunal.

9. In the result, the appeal filed by the Appellant/Transport Company is dismissed by confirming the award M.C.O.P.No.403 of 2008 dated 07.04.2011 passed by the Motor Vehicles Claims Tribunal, (FTC-II), Additional District Judge, Coimbatore. The appellant/Transport Corporation is directed to deposit amount as determined before the Tribunal / less the amount if any, already deposited, along with the interest at the rate of 7.5% within a period of eight weeks from the date of receipt of copy of this order. On such deposit, the claimant is permitted to withdraw the amount, by way of filing proper application before the Tribunal. There shall be no order as to costs. Consequently Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CCC)

//True copy//

Sub Assistant Registrar

klr

To

1. The Motor Vehicles Claims Tribunal,
(FTC-II), Additional District Judge, Coimbatore.

2. The Section Officer,
V.R. Section, High Court, Madras - 104.

+1cc to Mr. Ma. P. Thangavel, Advocate SR.No.24838

+1cc to Mr. V. Udayakumar, Advocate SR.No.23961

C.M.A.No.766 of 2012

VSN II (CO)
GMY (22/08/2019)