

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.07.2015

CORAM :

THE HONOURABLE MR. JUSTICE N.KIRUBAKARAN

CMA No.1287 of 2015

and

M.P.No.1 of 2015

The Managing Director,
Tamil Nadu State Transport
Corporation Kumbakonam
Town and Munsif.

Appellant / 1st Respondent

vs.

1.Sathyamoorthy ... 1st Respondent / Petitioner

2.Thankadurai ... 2nd Respondent / 2nd Respondent

Prayer :- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act against the judgment and decree dated 27.01.2014 made in MCOP No.80 of 2012 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Nagapattinam.

For Appellant : M/s.D.Venkatachalam

For Respondent : Mr.S.P.Yuvaraj for R1

J U D G M E N T

The appeal has been preferred by the transport corporation against the finding of negligence as well as the quantum of compensation awarded by the tribunal.

2. Heard Mr.D.Venkatachalam, learned counsel appearing for the appellant/transport corporation who would submit that the respondent was negligent and he only invited the accident by getting into the moving bus. Therefore, the negligence has to be fastened on the 1st respondent/claimant and not against the driver of the transport corporation as rendered by the tribunal. He would further contend that the amount awarded by the tribunal is on the higher side and the same has to be reduced.

3. A close scrutiny of the award would show that the tribunal, considering the FIR filed against the driver of the bus and the evidence of PW1 which categorically state that before the passengers got into the bus and even before the conductor blew the whistle, the driver of the bus, rash and negligently started the bus resulting in falling of the respondent from the bus. The finding of

the tribunal that the driver alone was responsible for the accident is based on documentary as well as oral evidence. That apart, the driver of the bus did not file any counter complaint with regard to the accident. In those circumstances, the finding of the tribunal with regard to negligence aspect cannot be disturbed or found fault with.

4. As far as quantum of compensation is concerned, , the claimant sustained crush injury of left thigh with fracture shaft of left femur and laceration of skin grafting was done. Moreover, the claimant was admitted in the hospital as inpatient from 10.02.2010 to 19.02.2010 and from 20.02.2010 to 27.02.2010 and underwent surgery on 11.02.2010 and on 20.02.2010 for wound detriment and external fixture.

5. Taking into consideration the operations undergone by the claimant, mailunion of the bones, restriction of movements and skin grafting, PW3-doctor's determined the disability at 41%. Based on medical records and PW3-doctor's evidence, the tribunal rightly determined the disability at 41% and awarded a sum of Rs.82,000/- by granting Rs.2000/- per percentage of disability. Including conventional damages, the tribunal awarded a sum of Rs.2,00,438/- as compensation to the 1st respondent/claimant which is very reasonable and the same is confirmed. As far as interest is concerned, 7.5% awarded by the tribunal shall remain unaltered. However, it is made clear that the 1st respondent/claimant is not entitled to interest for the period during which the claim petition was dismissed for default.

6. In the result, this Civil Miscellaneous Appeal is dismissed . No costs. Consequently, connected Miscellaneous Petition is closed.

7. The appellant / transport corporation is directed to deposit the entire award amount alongwith interest and costs, within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the 1st respondent/claimant is permitted to withdraw the same.

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Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

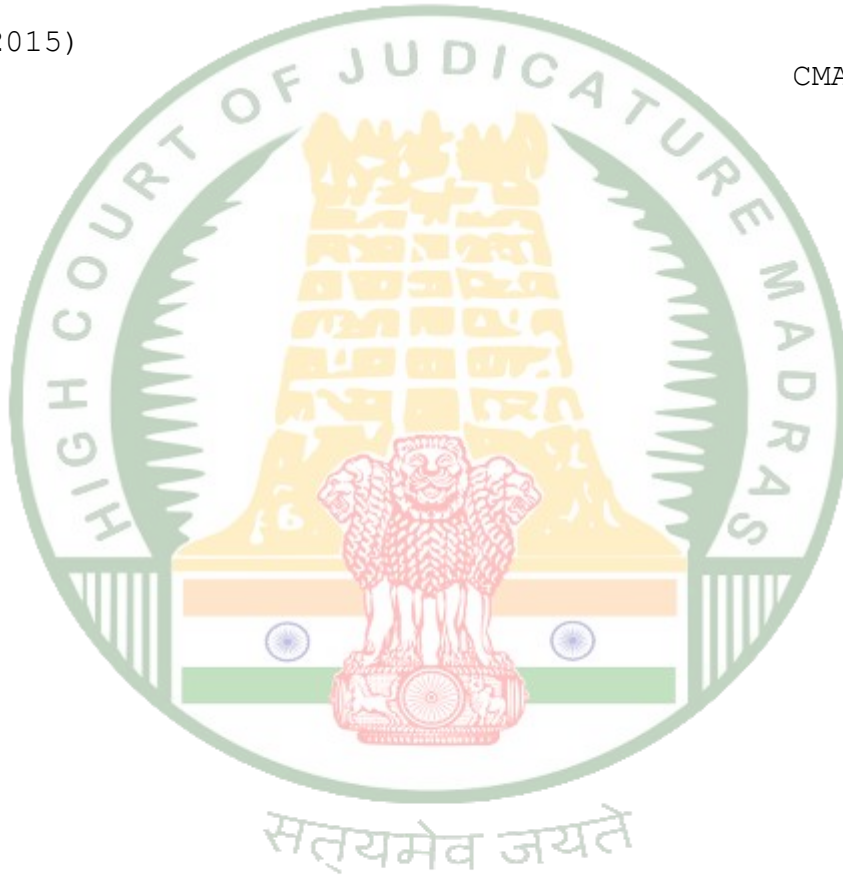
To

The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Nagapattinam.

+1cc to Mr.S.P. Yuvaraj, Advocate, S.R.No.33215
+1cc to Mr.D.Venkatachalam, Advocate, S.R.No.32905

JSV(CO)
EU(24/07/2015)

CMA No.1287 of 2015



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