

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.07.2015

CORAM

THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN

C.M.A. No. 1366 of 2015

&

M.P. No. 1 of 2015

The Managing Director,
Tamil Nadu State Transport
Corporation (Villupuram) Limited,
Thiruvannamalai Region,
Thiruvannamalai. ...Appellant/Respondent

Vs.

Easwari ...Respondent/Petitioner

Prayer: Civil Miscellaneous Appeal as against the judgment and decree dated 14.02.2014 passed in M.C.O.P. No. 94 of 2010 by the Motor Accidents Claims Tribunal (Subordinate Judge), Arni.

For Appellant :: Mr.K.J. Sivakumar

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred by the Transport Corporation as against the award of Rs.4,49,800/- granted by the Motor Accidents Claims Tribunal (Sub Court), Arni, in favour of the respondent herein for the injuries sustained by her in the accident, which occurred on 04.06.2010.

2. Heard Mr.K.J. Sivakumar, learned counsel for the appellant, who would submit that the accident was invited by the claimant herself as she tried to get down from the moving bus. The learned counsel relied upon the judgment of the Criminal Court wherein the driver of the bus was acquitted by the Criminal Court to contend that the tort-feasor is the claimant herself and not the driver of the bus belonging to the appellant Corporation.

3. However, a perusal of the award would show that the FIR was registered against the driver of the bus and even if the Criminal Court had acquitted the driver, the finding given by the Criminal Court is not binding on the Civil Court or the Tribunal. That apart, the evidence of the driver of the bus, who was examined as R.W.1, would reveal that the victim tried to get down from the bus through

the front entrance when the bus had already started, which resulted in her falling down and sustaining injuries. However, the said testimony was rightly disbelieved by the Tribunal since a passenger falling down from a bus, would not get injured to such an extent resulting in amputation, that too, in a bus-stand, when the bus had allegedly started moving. Therefore, R.W.1's evidence has to be ignored and the Tribunal rightly fastened the liability on the Transport Corporation and the said finding cannot be interfered with.

4. The respondent/claimant sustained crush injuries on her left leg, resulting in amputation and the portion that remained after amputation was only an extent of 11 cms, as could be seen from Ex-P4, Discharge Summary. According to the Doctor, P.W.2, there is no possibility for fixation of artificial leg and the disability sustained by the claimant is 70%. Ex-P5 is the Disability Certificate issued by him.

5. Given the nature of disability sustained by the claimant, the compensation awarded by the Tribunal, namely, Rs.4,49,800/- is too low and the amounts, which have to be awarded under the usual heads have also not been awarded by the Tribunal. The accident was on 04.06.2010 and the claimant was aged about 55 years. The claimant is said to be a construction worker and she has also filed Ex-P3 to show that she is a member of Tamil Nadu Construction Workers' Welfare Board. Though it is alleged by the claimant that her monthly income is Rs.5000/-, in the absence of any material evidence in support of the same, the Tribunal, rightly determined the monthly income of the claimant at Rs.4000/-. The multiplier adopted by the Tribunal, as per the age of the claimant is 13 and the same is confirmed. Though the claimant sustained 70% disability, the loss of earning power would be 100%. Hence, "Loss of Income due to disability" is calculated as hereunder:

Loss of Income due to disability :: Rs.4000 x 12 x 13
:: Rs.6,24,000/-.

6. As far as other heads are concerned, the sum of Rs.10,000/- awarded towards "Pain and Suffering" is too low, as the claimant sustained grievous injuries leading to amputation leg and therefore, a sum of Rs. 40,000/- would be reasonable under the said head. Likewise, the sum of Rs.2000/- awarded towards "Transportation Expenses" is enhanced to Rs.10,000/-. Towards "Loss of Articles", the sum of Rs.1000/- was rightly awarded by the Tribunal and the same is confirmed. No amounts were awarded towards "Extra Nourishment" and "Loss of Amenities" by the Tribunal. Hence, Rs.25,000/- is awarded towards "Extra Nourishment" and Rs.50,000/- is awarded towards "Loss of Amenities". In all, a sum of Rs. 7,50,000/- is payable as compensation to the claimant. The rate of interest awarded by the Tribunal at 7.5% per annum remains unaltered.

7. Even though the appeal has been filed by the Transport Corporation, this Court has, suo motu, enhanced the compensation amount payable to the respondent, even in the absence of any

appeal/cross-appeal, at the admission stage itself, without notice to the respondent, as there is no necessity for the respondent to be heard in this matter, as he is going to be benefitted only. Only when the rights of parties are likely to get affected, principles of natural justice have to be complied with. When benefit is to accrue to the respondent, there is no need to issue notice to her.

8. Further, an appeal is the continuation of original proceedings and this Court is bound to re-appreciate the evidence and pleadings on record and award just compensation, as contemplated under the Act. The provisions of Motor Vehicles Act are beneficial in nature, which aim at consoling, comforting and compensating the victims of road accidents. This Court has power and jurisdiction under Order XLI Rule 33 CPC to award more compensation and this has also been recognised by the Honourable Apex Court. Hence, in an endeavour to award just and adequate compensation, the award of the Tribunal, to the tune of Rs.4,49,800/- is enhanced to Rs.7,50,000/-.

9. The appellant Transport Corporation is directed to deposit the entire amount, as per the modified award passed by this Court, with interest and costs, after deducting the amount already deposited, if any, before the Tribunal, within a period of six weeks from today failing which the Chairman cum Managing Director as well as Financial Advisor cum Chief Accounts Officer of the appellant Transport Corporation shall appear before this Court on expiry of the said period. On such deposit being made, the respondent/claimant is permitted to withdraw the entire amount within a period of one week thereafter. The claimant shall pay additional court-fee for the enhanced amount, if any.

10. In the result, the Civil Miscellaneous Appeal is dismissed and the award of the Tribunal, to the tune of Rs.4,49,800/- is enhanced to Rs.7,50,000/-. No costs. Connected M.P. is closed.

11. For reporting compliance, call the matter after six weeks.

सत्यमेव जयते

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

The Motor Accident Claims Tribunal,
(Sub Court), Arni.

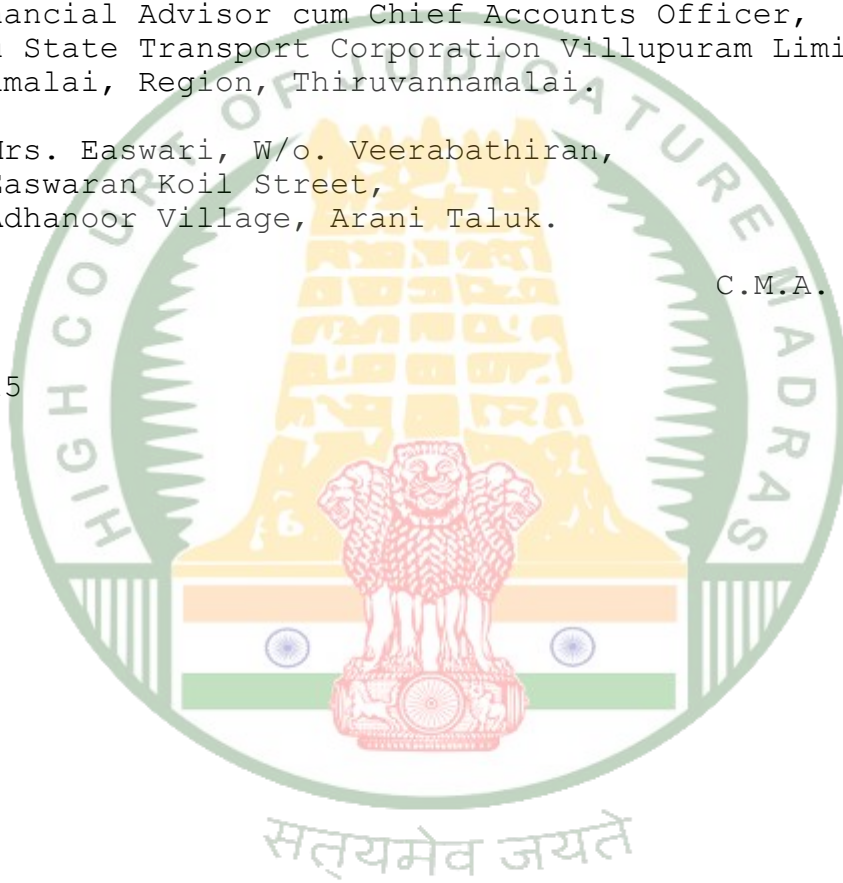
2. The Managing Director, Tamil Nadu State Transport Corporation,
(Villupuram) Limited, Tiruvannamalai.

3. The Financial Advisor cum Chief Accounts Officer,
Tamil Nadu State Transport Corporation Villupuram Limited
Thiruvannamalai, Region, Thiruvannamalai.

Copy to: Mrs. Easwari, W/o. Veerabathiran,
Easwaran Koil Street,
Adhanoor Village, Arani Taluk.

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