

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2015

CORAM:

THE HON'BLE MR.JUSTICE T.RAJA

C.M.A. Nos.187 and 2744 of 2015
and
M.P.No.1 of 2015

The Managing Director,
M/s. Tamil Nadu State Transport
Corporation Limited (Kumbakonam
Region), Periya Melakuparai,
Trichy- 620 001.

... Appellant in C.M.A.187/2015
& Respondent in C.M.A.2744/2015

Versus

G.Murugesan

... Respondent in C.M.A.187/2015
& Appellant in C.M.A.2744/2015

Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988, against the order and decretal order dated 01.04.2014 made in M.C.O.P.No.60 of 2013 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Perambalur.

For Appellant/Respondent : Mr.D.Venkatachalam in C.M.A.187 of 2015 & C.M.A.2744 of 2015

For Respondent/Appellant : Mr.T.Gobinath
for M/s.Royan Law Associates in
C.M.A.187 of 2015 & C.M.A.2744
of 2015

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JUDGMENT

Civil Miscellaneous Appeal No.187 of 2015 has been filed by the Transport Corporation, challenging the award passed by the Motor Accident Claims Tribunal cum Chief Judicial Magistrate, Perambalur, in M.C.O.P.No.60 of 2013 dated 01.04.2014, in and by which the learned Tribunal partly allowed the MCOP filed by the Respondent/Claimant, awarded total compensation of Rs.11,50,312.70, after reducing 50% of the award amount namely Rs.5,75,156.35 towards contributory negligence on the part of the Respondent/Claimant directed the Transport Corporation to pay Rs.5,75,156.35 to the Respondent/Claimant.

The Claimant filed Civil Miscellaneous Appeal No. 2744 of 2015, challenging the reduction of 50% of award amount namely Rs.5,75,156.35 towards contributory negligence fixed against him by the Tribunal and for enhancement of the compensation awarded by the Tribunal.

2. On 07.03.2012, at 6.45 p.m., while the Claimant Murugesan was standing on the mud portion of the Perambalur - Ariyalur road near Sadaikkanpatti - Thondampatti junction, the driver of the bus bearing Registration No.TN45-N-2957 came from north to south driven the bus in a rash and negligent manner, without sounding horn and dashed against the Claimant Murugesan. As a result, the claimant was thrown away and sustained multiple fractures and injuries all over the body. In view of the bone fracture caused on his right leg below the knee, he has immediately taken treatment from the Government Hospital Ariyalur and subsequently he was shifted to Government Hospital, Thanjavur where he was taken treatment as in-patient from 7.3.2012 till 19.4.2012 and followed by treatment at Private Hospital, his right leg was amputated. Therefore, the claimant was unable to carry on his daily routine work as before. On this basis, he made a claim petition in M.C.O.P.No.60 of 2013 on the file of the Motor Accident Claims Tribunal cum Chief Judicial Magistrate, Perambalur for a sum of Rs.10,00,000/- under various heads.

3. The Transport Corporation also filed a detailed counter stating that at about 18.45 hours, on 7.3.2012, when the bus was proceeding in the Perambalur-Ariyalur road from west to east with due care and caution and when the bus came near Sadaikkanpatti, the driver of the bus noticed the Claimant trying to cross the road from left side to right side, on seeing him, the driver turned the bus to the right side even to the mud portion that is to the Northern extreme of the road and stopped the bus. However, the Appellant/claimant proceeded to the right side of the road and hit against the portion of the bus and caused the accident. Therefore, the driver of the Transport Corporation was no way responsible for the cause of the accident.

4. In these facts and circumstances, the Tribunal has reached the conclusion that the Claimant was also jointly responsible for the accident as he has also contributed his negligence. Although the Tribunal accepted the disability suffered by the claimant at the rate of 75% in view of the amputation of his right leg below his knee, fixed a sum of Rs.4,000/- as notional monthly income as against his claim of Rs.10,000/-. However, considering the fact that the Claimant has suffered 100% permanent disability in view of amputation of his right leg below the knee, fixed 100% disability and applied appropriate multiplier as $4000 \times 12 \times 75 \times 11 / 100$ and fixed Rs.6,12,000/- towards loss of future income. Finally fixing Rs.312.70 towards medical expenses, Rs.2,00,000/- towards pain and suffering Rs.2,00,000/- towards attender charges,

Rs.20,000/- towards nutritious food Rs.10,000/- towards transportation expenses and Rs.1,00,000/- for fixing artificial limb and ultimately the Tribunal reached the conclusion to arrive at the total compensation of Rs.11,50,312.70 payable to the Appellant/Claimant. As I mentioned above, considering the fact that the Claimant was also responsible for the contributory negligence, 50% of the compensation awarded to the Claimant namely Rs.5,75,156.35 was reduced towards his contributory negligence and directed the Transport Corporation to pay a sum of Rs.5,75,156.35 to the Claimant along with interest and costs.

5. Aggrieved by the entire compensation awarded by the Tribunal, the Transport Corporation has come up with the appeal stating that the accident had happened only due to the negligent on the part of the claimant and that there is no negligence on the part of the driver of the Transport Corporation. The learned counsel for the Transport Corporation drew my attention to the cross-examination of the claimant wherein the claimant himself admitted that he has crossed the road without showing any sign, therefore, the learned Tribunal has rightly come to the conclusion that the Claimant has contributed his negligence by crossing the road from left side to right side without showing any signal, while the vehicle belonging to the Transport Corporation was proceeding from West to East.

6. Aggrieved by the reduction of award amount of Rs.5,75,156.35 towards contributory negligence, the Appellant / claimant has come up with the appeal contending that at no point of time the claimant/injured has admitted his contributory negligence. Whereas the learned Tribunal has misconstrued as though the claimant has admitted his contributory negligence by crossing the road without showing any signal to stop the vehicle which was proceeding from West to East for which the Claimant should also be held responsible. Continuing his argument the learned counsel appearing for the claimant seeking enhancement of the claim amount would draw the notice of the Court to the deposition of the claimant as P.W.1 recorded in the cross-examination. Wherein according to the learned counsel for the appellant/Claimant nowhere the Appellant/claimant has admitted his negligence for the cause of the accident. Therefore, reduction of 50% of the award amount towards contributory negligence namely Rs.5,75,156.35 out of total compensation at Rs.11,50,312.70 is absolutely unfair and unjustified and on this basis he pray for enhancement of the award amount.

7. On the other hand, the learned counsel appearing for the Transport Corporation has challenged the correctness of even 50% of the award would submit that the claimant who unfortunately has suffered multiple injuries, as a result lost his right leg below the knee by amputation, has invited the unfortunate accident by crossing the important junction namely Perambalur - Arivalur road near Sadaikkanpatti - Thondampatti junction without even seeing both sides where any vehicle was crossing on the road. Again reading in his own way the cross-examination of

P.W.1, the learned counsel for the Transport Corporation has submitted that the claimant has clearly admitted from his own mouth that he has crossed the road at Perambalur - Ariyalur road near Sadaikkanpatti - Thondampatti junction without showing any gesture or sign. Therefore, the claim made by the Appellant/Claimant that he was standing at the extreme Eastern mud road at Sadaikkanpatti - Thondampatti junction, Perambalur - Ariyalur main road and at that time the bus belonging to the Transport Corporation was proceeded on the above said road from North to South driven by its driver in a rash and negligent manner caused the accident is out of question. When the Appellant/claimant in his claim petition has pleaded that he was standing on the extreme Eastern portion of the mud road at Sadaikkanpatti - Thondampatti junction, Perambalur - Ariyalur main road and he has also admitted in the cross-examination that he was crossing the road without showing any gesture or sign for stopping the vehicle, this Court is of the view that although the Tribunal has reached the conclusion to make 50% reduction from award amount towards contributory negligence, considering the peculiar circumstances of the case, that he was 30 years old at the time of accident on 7.3.2012, the unfortunate accident took place as a result of which he had lost his right leg below the knee, this Court is of the considered view that instead of 50% reduction towards contributory negligence 25% alone can be held against the Appellant/claimant. As a result, instead of 50% of the total amount of Rs.11,50,312.70 only 25% namely Rs.2,87,593/- is slashed down towards contributory negligence and the balance amount of Rs.8,62,719/- together with interest and costs shall be paid to the Appellant/claimant.

8. In the result, the appeal filed by the Transport Corporation is dismissed for the reasons recorded as above for enhancement of award amount and the appeal filed by the claimant is disposed of with enhancement of award amount of Rs.2,87,593/-. It is represented by the learned counsel for the Transport Corporation except the statutory deposit of Rs.25,000/- the entire award amount has not been deposited. Hence, the Transport Corporation is directed to deposit the balance award amount together with interest and costs to the credit of M.C.O.P.No.60 of 2013 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Perambalur, within a period of four weeks from the date of receipt of copy of this order. On such deposit, it is open to the claimant to move appropriate application before the Tribunal to withdraw the balance amount. Consequently, M.P.No.1 of 2015 is closed.

Sd/-
Assistant Registrar(CO)

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Sub Assistant Registrar

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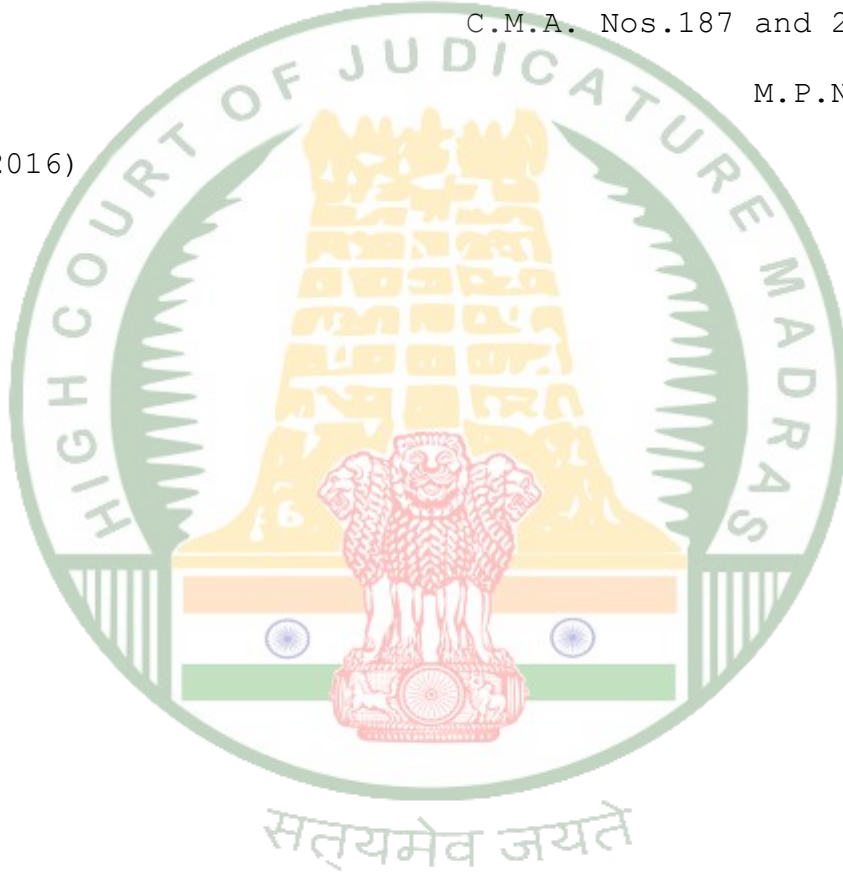
The Motor Accident Claims Tribunal,
Chief Judicial Magistrate,
Perambalur.

+1cc to Mr.D.Venkatachalam, Advocate, S.R.No.65317

+1cc to Mr.M/s.Royan Law Associates, Advocate, S.R.No.65232

C.M.A. Nos.187 and 2744 of 2015
and
M.P.No.1 of 2015

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