

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.11.2015

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THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.2597 of 2015

and

M.P.No.1 of 2015

The Managing Director,  
Tamil Nadu State Transport  
Corporation (Villupuram Division-I)Ltd.,  
Villupuram.

... Appellant/Respondent

vs.

B.Ganesan

... Respondent/Petitioner

Civil Miscellaneous Appeal filed under Section 173  
Motor Vehicles Act, 1988 against the Judgment and decree dated  
05.07.2014 passed in M.C.O.P.No.42 of 2013, on the file of the  
Motor Accident Claims Tribunal/Special Subordinate Court-I (MCOP  
Cases), Villupuram.

For Appellant : Mr.P.Paramasiva Doss

JUDGMENT

This Appeal is directed against the Judgment and  
decree dated 05.07.2014 passed in M.C.O.P.No.42 of 2013 on the  
file of the Motor Accident Claims Tribunal/Special Subordinate  
Court - I, Villupuram, awarding a sum of Rs.6,55,737/- for the  
injuries sustained by the claimant/respondent.

2. On 4.2.2011 at about 10.30 a.m., while the  
respondent was proceeding by his scooty two wheeler bearing  
Reg.No.TN-32-D-1946, on the Cuddalore to Tirukoilur road, near  
Rajeswari Petrol Bunk at Tirukoilur, from east to west, the Bus  
belonging to the appellant Transport Corporation being driven by  
its driver in a rash and negligent manner, dashed against the  
respondent and ran over on his right leg and as a result, right  
leg of the respondent was amputated. Therefore, the claimant  
claimed a compensation of Rs.10,00,000/-.

3. On appreciation of pleadings and evidence on record, by judgment and decree dated 05.07.2014 passed in MCOP No.42 of 2013, the Tribunal awarded a total compensation of Rs.6,55,737/- with interest at 7.5% from the date of claim petition till the date of realisation. Being aggrieved by the same, the Transport Corporation has filed this Appeal.

4. The learned counsel appearing for the Transport Corporation would submit that the claimant has contributed negligence to the accident and that was not considered by the Tribunal and the notional monthly income fixed by the Tribunal is higher and contrary to the decisions of this Court and consequently, higher amount was awarded as compensation and therefore, the impugned judgment and decree have got to be set aside.

5. Heard the learned counsel appearing for the appellant and perused the materials available on record.

6. This Court is unable to accept the contention of the learned counsel for the appellant that the Tribunal has not considered the issue of contributory negligence on the part of the claimant. The learned Tribunal has found that after the accident, the driver of the Bus has not given any complaint contending that the claimant was responsible for the accident and on the contrary, it is found that the driver of the Bus had to stop the Bus at 25 stoppings and reach the destination and at the time of the accident, according to the available evidence, while the claimant/respondent was proceeding, the Bus belonging to transport corporation came speedily and hit the respondent and as a result, the right leg of the claimant was crushed at the spot and therefore, the contention that the claimant had contributed negligence was rejected. From the deposition of RW.1 driver of the bus, it is seen that he did not give any complaint to the effect that the accident had occurred only due to negligence of claimant. Had it been the case of the driver of the offending vehicle that the claimant alone had invited the accident by hitting the bus, nothing prevented him to file an FIR against him, which he has chosen not to do. Therefore, the contention of the learned counsel for the appellant Transport Corporation that the Tribunal ought to have fixed the contributory negligence on the claimant is wholly untenable. Again, from the discharge certificate issued by the Doctor - Ex.P.7, it is seen that the injured, after the accident, was admitted at the MIOT Hospital, Chennai, and took treatment therein as inpatient. It further says that his right leg below his knee has been amputated in view of the unfortunate accident occurred to him. Therefore, this Court has to concur with the findings of the Tribunal and has to reject such contention that the claimant has contributed negligence to the accident.

7. The other contention of the learned counsel for the appellant that the compensation amount awarded is excessive also cannot be countenanced. To prove the nature of the injuries, period of treatment taken and the expenses incurred, the respondent/claimant has filed Wound Certificate Ex.P.3, Medical Bills Ex.P.8, Ex.P.7 Discharge Certificate and Ex.P.4 Permanent Disability Certificate.

8. In view of the above, though the learned counsel appearing for the appellant / Transport Corporation submitted that the Tribunal ought to have fixed Rs.3,000/- instead of Rs.4,000/- as the notional monthly income of the claimant/respondent, the same cannot be accepted, for, the Tribunal, after considering the fact that the claimant was an agriculturist and aged about 77 years, fixed the notional monthly income at Rs.4,000/-. On perusing Ex.p.4 (Disability Certificate) issued by the Doctor PW.2 in fixing 70% disability, the Tribunal arrived at the compensation of Rs.1,68,000/- (i.e.  $\text{Rs.4,000} \times 12 \times 5 \times 70/100$ ) towards permanent disability. Though the learned counsel for the appellant contended that the multiplier adopted is wrong, the Tribunal considering the age of the claimant as 77 years as mentioned in the Would Certificate Ex.P.3, adopted the multiplier 5. Further, on consideration of evidence and facts, and considering the decisions of this Court, this Court is of the view that the compensation awarded under other heads are also just and reasonable.

9. Hence, for the reasons stated above, this Court finds no merit in the Appeal. Hence, the Appeal is dismissed. No costs. The connected Miscellaneous Petition is closed.

10. The appellant / Transport Corporation is directed to deposit the entire award amount with interest and costs, less the amount already deposited if any, to the credit of M.C.O.P.No.42 of 2013, on the file of the Motor Accident Claims Tribunal, (Special Subordinate Court (MCOP CASES) Villupuram, within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the claimant is permitted to withdraw the entire amount by making necessary application before the Tribunal.

Sd/-  
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

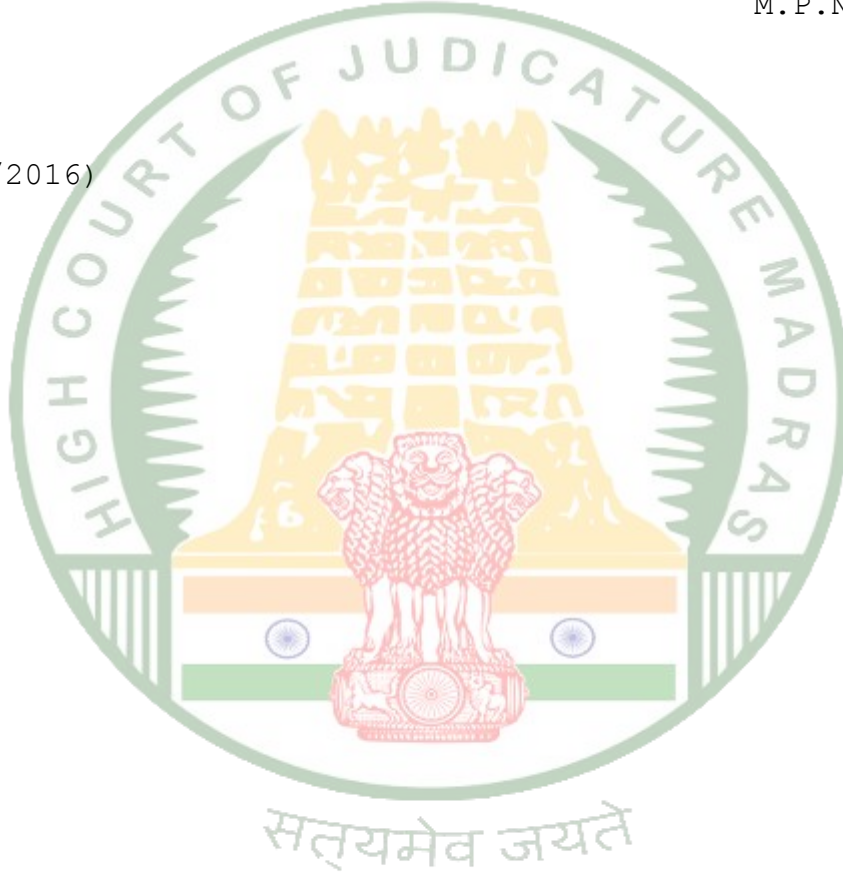
To

The Motor Accident Claims Tribunal/  
Special Subordinate Court-I (MCOP Cases),  
Villupuram.

+1cc to Mr.P.Paramasivadoss, Advocate sr.65335

C.M.A.No.2597 of 2015  
and  
M.P.No.1 of 2015

vgi (CO)  
srg (28/04/2016)



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