

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2015

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A. No.2705 of 2015
& M.P.No.1 of 2015

The Managing Director,
Tamil Nadu State Transport Corporation
(Kumbakonam Division I) Limited,
Railway Station New Road,
Kumbakonam. Appellant/Respondent

Versus

C.Kalaivanan ... Respondent/Petitioner

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988 against the judgment and decree dated 05.08.2011 made in M.C.O.P.No.954/2007 on the file of the Motor Accidents Claims Tribunal, (2nd Additional Subordinate Judge), Cuddalore.

For Appellant : Mr.D.Venkatachalam

For respondent : Ms.Ramya Rao

J U D G M E N T

The Civil Miscellaneous Appeal filed by the appellant/transport Corporation is directed against the correctness of the impugned award dated 05.08.2011 made in M.C.O.P.No.954/2007 on the file of the Motor Accidents Claims Tribunal, (2nd Additional Subordinate Judge), Cuddalore, awarding a sum of Rs.1,55,960/- with 7.5% interest per annum, for the multiple injuries sustained by the respondent/claimant.

2.According to the claimant, on 14.02.2007, at about 05.00 p.m., while the petitioner was riding as pillion rider in the

motor cycle bearing Registration No.TN-51-S-3926 at his extreme left side of the Sirkali Thirumullai Vasal Main Road at Varusapatha, the appellant's vehicle bearing Registration No.TN-49-N-1177 TNSTC bus came in the opposite direction at a very high speed in a rash and negligent manner, hit against the injured/claimant and caused the accident. Due to the accident, the injured/claimant was thrown out of the motor cycle and sustained grievous injuries and multiple fractures all over his body and head. He was immediately admitted in Government Hospital, Sirkali and then transferred to RMMC Hospital, Chidambaram for advanced treatment. Still now he is undergoing treatment at private hospitals. He claimed a sum of Rs.5,00,000/- as compensation. The appellant/Transport Corporation resisted the claim.

3.After considering the oral and documentary evidence, the Tribunal held that the accident had occurred only due to the rash and negligent driving of the driver of the appellant-Transport Corporation and awarded a sum of Rs.1,55,960/- as compensation payable to the claimant with interest at the rate of 7.5%. Aggrieved by that award, the appellant-Transport Corporation has filed the present appeal.

4.Heard Mr.D.Venkatachalam, learned counsel for the appellant and Ms.Ramya Rao, learned counsel for the respondent/claimant and perused the documents on record. On the side of the claimant, P.Ws.1 and 2 were examined and documents Exs.P1 to P6 were marked. On the side of the appellant/Transport corporation, no witness was examined and no document was marked.

5.Learned counsel appearing for the appellant/Transport Corporation, assailing the impugned award passed by the Tribunal, contended before this Court that the Tribunal has wrongly fixed the multiplier at '18' and has awarded a sum of Rs.1,20,960/- towards 40% disability, which is on the higher side. It is also argued by the learned counsel for the appellant that in fixing partial disability at 40%, on the basis of Ex.P5/disability certificate, issued by P.W.2 Doctor to the claimant and Ex.P6/x-rays of the claimant, has adopted the multiplier method on the higher side. He would further submit that a sum of Rs.20,000/- awarded by the Tribunal under the head of pain and suffering and a sum of Rs.5,000/- awarded by the Tribunal towards medical expenses are excessive and therefore, the approach adopted by the Tribunal is unreasonable.

6. But this Court is not able to accept the submission made by the learned counsel for the appellant, for the reason that since the claimant has produced sufficient evidence to establish the multiple injuries and pain suffered by him through PW2/Doctor R.Venugopal, M.S.D. Ortho, Cuddalore, Ex.P2/report of the Motor Vehicle Inspector pertaining to the accident, dated 15.02.2007, Ex.P3/wound certificate and Ex.P.4/discharge summary of the petitioner, which show that he was taking treatment from 15.02.2007 to 08.03.2007, a sum of Rs.1,20,960/- arrived at by the Tribunal found to be reasonable. Since the Tribunal examined P.W.2/Doctor, who opined that the claimant sustained grievous injury and fracture of bone on his right wrist and the screws were fixed for the bone fracture and they were not removed at the time of examination, has rightly come to the conclusion that due to the fixing of screws for the bone fracture, the movement of the right wrist has been restricted and found this might also cause considerable pain, has rightly fixed the partial disability at 40%. Thereafter, considering the age of the claimant as 18 years at the time of accident and as he was doing agricultural work and was earning Rs.7,500/- per month, has rightly fixed Rs.4,000/- per month as notional monthly income. On this basis, in my considered opinion, as the claimant has suffered 40% partial disability that has been sufficiently supported by Ex.P6 showing that screws were fixed and they were also visible even at the time of Trial before the Tribunal, fixing Rs.1,20,960/- ($4000 \times 12 \times 14 \times 18/100$) under the head of loss of income, seems to be reasonable. Similarly, a sum of Rs.20,000/- towards pain and suffering, a sum of Rs.5,000/- towards Extra Nourishment, a sum of Rs.5,000/- towards Transportation and a sum of Rs.5,000/- towards medical expenses awarded by the Tribunal, cannot be found fault with since the claimant was taking treatment from 15.02.2007 to 08.03.2007. That is confirmed as it is. Thus, it is seen that the Tribunal has awarded a total compensation of Rs.1,55,960/-, which seems to be reasonable and this Court is inclined to confirm the same.

7. Accordingly, the Civil Miscellaneous Appeal fails and the same is dismissed. No costs. Consequently, Connected miscellaneous petition is closed.

8. Since the learned counsel for the appellant submitted that the appellant has deposited Rs.25,000/- towards statutory deposit, the balance amount is directed to be deposited within a period of four weeks from the date of receipt of a copy of this

order. On such deposit, it is for the claimant to move a petition before the learned Tribunal for withdrawing of the said amount.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

vga

To

1. Motor Accidents Claims Tribunal,
(2nd Additional Subordinate Judge),
Cuddalore

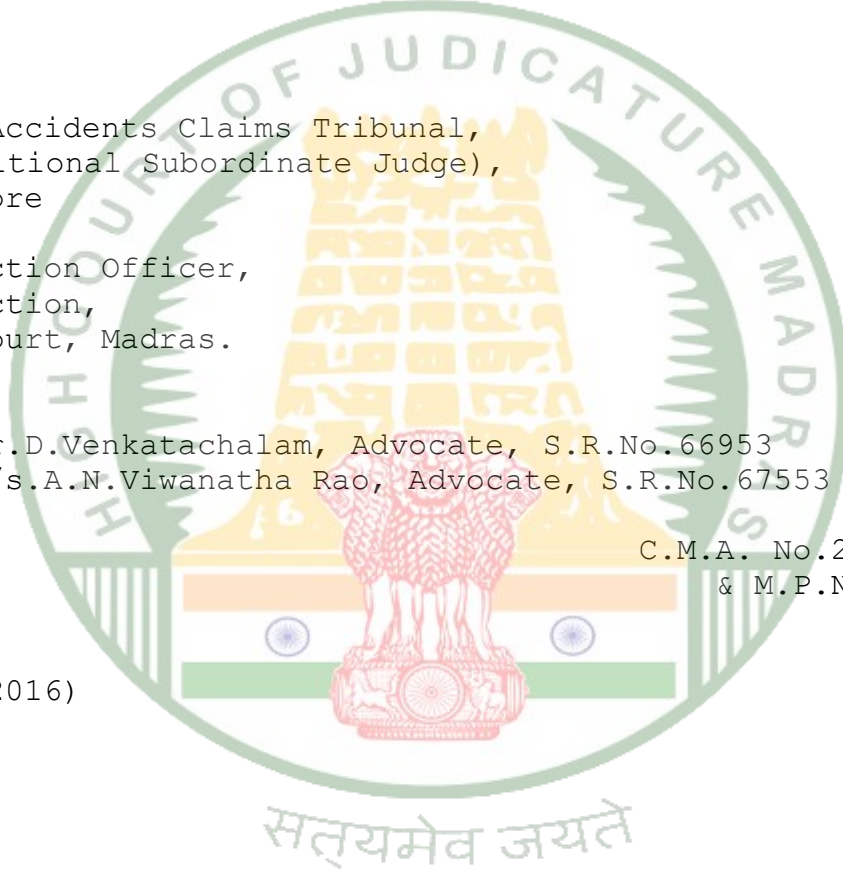
2. The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.D.Venkatachalam, Advocate, S.R.No.66953

+1cc to M/s.A.N.Viwanatha Rao, Advocate, S.R.No.67553

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PPA(CO)
CA(20/01/2016)



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