

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 15.12.2015

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THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A. No.2774 of 2015
& M.P.No.1 of 2015

The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
No.3, 137, Salamedu, Vazhudhareddy Post,
Villupuram Town and District. .. Appellant

Versus

S.Kubendiran .. Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988 against the judgment and decree dated 12.09.2013 made in M.C.O.P.No.559/2010 on the file of the Motor Accidents Claims Tribunal, (Additional Special Judge), Krishnagiri.

For Appellant : Mr.P.Paramasiva Doss

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 12.09.2013 made in M.C.O.P.No.559/2010 on the file of the Motor Accidents Claims Tribunal, (Additional Special Judge), Krishnagiri, awarding a sum of Rs.1,04,000/- with 6% interest per annum, for the multiple injuries sustained by the respondent/claimant.

2.According to the claimant, on 12.12.2009, when the claimant was proceeding in his bicycle slowly in the Bangalore to Thiruvannamalai Main Road, from Mathur to go to Samalpatti, at about 2.30 p.m., the T.N.S.T.C. Bus bearing Registration No.TN 32-N-3125 belonging to the appellant, was driven by its driver in a rash and negligent manner in the same direction and suddenly hit behind the claimant's bicycle near Kalaimagal Matriculation School, Mathur. Due to the impact, the claimant sustained grievous injuries. His bicycle also worth Rs.2,000/- was damaged, since the accident had occurred only due to the rash and negligent driving of the driver of the said bus.

Immediately after the accident, the claimant was taken to the Government Hospital, Uthangarai and after first aid treatment, he was taken to the Government Head Quarters Hospital at Krishnagiri and admitted there as an inpatient. Thereafter, he has taken treatment in Private Nursing Home at Krishnagiri and Uthangarai. Still he is taking treatment in Private Nursing Home. Hence, he claimed a sum of Rs.3,00,000/- as compensation. The appellant/Transport Corporation resisted the claim.

3.After considering the oral and documentary evidence, the learned Tribunal held that the accident had occurred only due to the rash and negligent driving of the driver of the appellant-Transport Corporation Bus, hence awarded a sum of Rs.1,04,000/- as compensation payable to the claimant with interest at the rate of 6%. Aggrieved by that award, the appellant-Transport Corporation has filed the present appeal.

4.Heard Mr.P.Paramasiva Doss, learned counsel appearing for the appellant and perused the documents on record. On the side of the claimant, P.Ws.1 and 2 were examined and documents Exs.P1 to P5 were marked. On the side of the appellant/Transport corporation, driver of the bus was examined as R.W.1 and no document was marked.

5.Learned counsel appearing for the appellant/Transport Corporation, assailing the impugned award passed by the learned Tribunal, contended before this Court that though the claimant was a student, aged about 19 years, has asked for higher compensation on a frivolous ground that he was doing part time job, without any supporting document, a huge amount has been awarded as compensation. Again he would further submit that at the time of accident, while the Transport Corporation bus was proceeding with moderate speed, the claimant rode bicycle with a rash and negligent manner and suddenly crossed the road, without noticing on the coming vehicle, hence, dashed against the Transport Corporation bus, due to which the claimant sustained injuries. When this being the position, the Tribunal has fixed the entire negligence on the part of the driver of the bus, erroneously. The Tribunal has also made an erroneous approach in awarding a sum of Rs.60,000/- towards 30% disability, Rs.10,000/- towards future treatment, Rs.10,000/- towards pain and suffering and Rs.15,000/- towards nutrition and transportation, which are on the higher side and therefore, the quantum of compensation is liable to be interfered with, he pleaded.

6.This Court is not able to find any merit in the contentions made by the appellant. For, it is not in dispute that on the date of accident, the claimant had sustained grievous injuries, which was caused by the rash and negligent

driving of the driver of the offending vehicle and the accident also has been sufficiently proved by registration of F.I.R., which was marked as Ex.P1 before the Mathur Police Station in Crime No.976 of 2009 under Sections 279 and 337 of IPC against the driver of the bus. In the said F.I.R., it has been stated that the driver has driven the vehicle in a rash and negligent manner and caused the accident. Therefore, the Tribunal has rightly come to the conclusion that the driver of the vehicle, belonging to the Transport Corporation, was responsible for the cause of accident. Accordingly, the Tribunal has awarded a sum of Rs.60,000/- under the head '30% of disability', accepting the negligence on the part of the driver and agreeing with the evidence adduced by Doctor D.V.Gandhi, who was examined as P.W.2 on the claimant's side. The disability certificate/Ex.P5, issued by the Doctor also reveals as follows:

" ...Right pubic ramus fracture, upper region was malunited by 2 degrees and not able to sit down folding legs, squat easily, not able to walk for long distance, stand for long time, climb the steps and participate in sports and not able to do hard work as before and awarded 30% disability".

7.It is seen that the claimant being 19 years old at the time of accident as a student in Aringar Anna College, Krishnagiri, was doing part time milk business at that time, therefore, learned Tribunal, taking note of such fact, has awarded a sum of Rs.60,000/- towards 30% of disability, by fixing Rs.2,000/- per percentage of disability. Again, considering the fact that the claimant had suffered temporary loss of earning for two months during the treatment period, learned Tribunal has awarded a sum of Rs.9,000/- by fixing Rs.4,500/- as monthly income. Similarly, by taking note of the above said aspect, the learned Tribunal has awarded a sum of Rs.10,000/- towards pain and suffering, a sum of Rs.15,000/- towards nutrition, transport and attender charges and a sum of Rs.10,000/- towards future treatment, which, in my view, are just and reasonable compensation. Accordingly, entire sum as awarded by the Tribunal is hereby confirmed.

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 the said amount.

9.In fine, the Civil Miscellaneous Appeal fails and the same is dismissed. No costs. Consequently, Connected miscellaneous petition is closed.

vga

-s/d-

Assistant Registrar (CS-II)

True Copy

Sub-Assistant Registrar

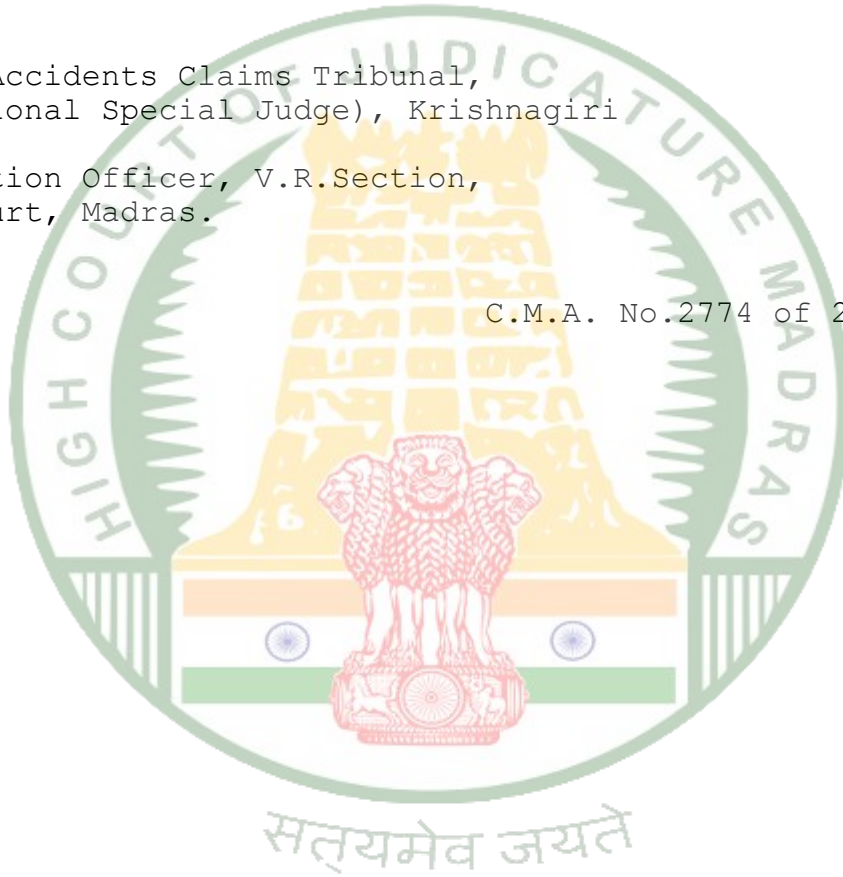
To

1. Motor Accidents Claims Tribunal,
(Additional Special Judge), Krishnagiri

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

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