

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.12.2015

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THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.2869 of 2015

and

M.P.No.1 of 2015

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

vs.

Sivakumar ... Respondent/ Petitioner

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the Judgment and Decree dated 19.03.2014 made in MCOP No.1155 of 2012 on the file of the Motor Accident Claims Tribunal/III Additional District Court at Poonamallee.

For Appellant : Mr.K.J.Sivakumar

For respondent : Mr.UM.Ravichandran

JUDGMENT

The Managing Director of the Tamil Nadu State Transport Corporation Ltd., Kancheepuram Region, has filed this appeal against the impugned Judgment and Decree dated 19.3.2014 made in MCOP No.1155 of 2012 by the Motor Accident Claims Tribunal (III Additional District Judge), Poonamallee awarding a sum of Rs.2,98,253/- as total compensation for the multiple injuries suffered by the claimant/injured respondent.

2. The learned counsel appearing for the appellant assailing the impugned award would submit that the Tribunal has wrongly accepted the contention of the claimant/respondent that when the respondent was travelling along with four others in a share auto bearing Regn.No.TN 18 D 5242 driven by its driver on Thirutani to Chennai Road, after finishing their pilgrimage tour at Thiruthani Murugan Temple and returning home, and when they were coming opposite to Govt.Arts College Hostel, Thiruthani, at about 21.00

hours, a bus belonging to the appellant Transport Corporation bearing Regn.No.TN 21 1479 (Route No.444S) driven by its driver in a rash and negligent manner endangering the public safety came at a high speed from opposite direction and hit against the said share auto and caused the accident. The Motor Accident Claims Tribunal believing the evidence of PW.1, without even getting it corroborated by natural independent witnesses has wrongly accepted the case of the injured respondent as though he has suffered multiple injuries in the accident due to negligent driving of the driver of the offending vehicle belonging to the Transport Corporation. The Tribunal has wrongly fixed the partial permanent disability at 71% and awarded a sum of Rs.1,42,000/- towards permanent disability and also awarded a sum of Rs.75,000/- towards loss of future earning capacity. The approach of the Tribunal is unjustifiable, therefore, considering these submissions, this Court has to modify the award, he pleaded.

3. This Court is unable to find any merit in the above submissions. The reason is that the Tribunal while entertaining the claim petition, firstly, it rightly considered the issue whether the respondent was the person who invited the accident on 6.9.2012 at about 21.000 hours. The respondent/claimant was travelling along with four others in a share auto involved in the accident driven by its driver, Murali, and when they were returning after having pilgrimaged Thiruthani Murugan Temple, on Tiruthani to Chennai Road at Government Arts College Hostel, Thiruthani, a bus bearing Reg.No.TN 21 1479 belonging to the appellant Transport Corporation being driven by its driver in a rash and negligent manner hit against the said share auto and caused the accident. As a result, the claimant suffered Grade III C (Compound fracture) both bones tibia and fibula, left leg (Poplited Arthry injury), fracture middle 3rd right tibia, fracture left Clavicle. He was given first aid treatment at the Government Hospital, Thiruthani on 6.9.2012 and on the same day, he was shifted to Government General Hospital, Chennai, and he was taking treatment as inpatient upto 11.10.2012. Subsequently, he was taking treatment as outpatient. This has been spoken to by the Doctor, R.Subramanian, who was examined as PW.2. After examining the averments made in the FIR marked as Ex.P.1 dated 7.9.2012 along with other documentary evidence, the Tribunal rightly came to conclusion that there was negligence on the part of the driver of the offending bus belonging to the Transport Corporation. Therefore, this Court finds no infirmity with regard to this finding. After considering the nature of injuries suffered by the respondent/claimant which was substantiated by marking Ex.P.9 Wound Certificate, Ex.P.8 X-Ray, Ex.P.2 Accident Register Copy, Ex.P.4 dated 11.10.2012 Discharge Certificate, and Ex.P.5 dated 14.12.2012 Discharge Certificate and considering the evidence of PW.2 Doctor, the Tribunal rightly fixed partial permanent disability at 71%. On this background,

the Tribunal awarded a sum of Rs.1,42,000/- towards partial permanent disability. The determination of the quantum of compensation depends on several imponderables. In the assessment of those imponderables, there is likely to be a margin of error. In this background, the Tribunal has determined just compensation from the evidence which was brought on record. In view of the fact that the claimant has not precisely stated the amount of damages caused, the Tribunal has fixed a sum of Rs.75000/- towards loss of future earning capacity, which cannot be disputed.

4. For the reasons stated above, this Court is not inclined to interfere with the impugned judgment and decree and the same are confirmed. Hence, the Appeal fails and the same is dismissed. No costs. Connected Miscellaneous Petition is closed.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

asvm

To

The Motor Accident Claims Tribunal/
III Additional District Court,
Poonamallee.

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and
M.P.No.1 of 2015

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