

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2015

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THE HONOURABLE MR. JUSTICE T.RAJA

C.M.A.No.5 of 2015

and

M.P.No.1 of 2015

The Managing Director,
Tamil Nadu State Transport Corporation
(Salem) Limited,
Dharmapuri Region,
Bharathipuram, Dharmapuri - 5 .. Appellant/1st Respondent.

Vs

- 1.Mabob Sahib @ Mohammed Gouse, .. 1st Respondent/Petitioner
- 2.Mahaboob Ali .. 2nd Respondent/2nd Respondent
- 3.ICICI Lombard General Insurance Co. Ltd.,
Rep. By its Branch Manager, Branch Office,
Swarnamigai Plaza, SF No.6/5,
Block No.7, Ward - C, Omalur Main Road,
Salem - 636 009. .. 3rd Respondent/3rd Respondent

Prayer: This Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 30.08.2011, made in M.C.O.P.No.400 of 2008, on the file of the Motor Accident Claims Tribunal, Additional Subordinate Judge, Krishnagiri.

For appellant : Mr.D.Venkatachalam
For R1 : Mr.Selvam for Mr.S.Baskaran
For R3 : Mrs.R.Sreevidhya
R2 - exparte

JUDGMENT

This appeal is filed against the judgment and decree dated 30.08.2011, made in M.C.O.P.No.400 of 2008, on the file of the Motor Accident Claims Tribunal, Additional Subordinate Judge, Krishnagiri.

2. On 20.01.2008 at about 15.30 hours, while the first respondent / claimant was proceeding in a Minidor Pickup Van

bearing Registration No.TN-24-C-6357 belonging to the second respondent herein and insured with the third respondent herein along with the sweet potato goods from Karimangalam to Veppanapalli, near Paiyur petrol bunk, a bus belonging to the appellant transportation Corporation driven by its driver in a rash and negligent manner, dashed against the said Minidor Van, as a result, the said Minidor van was capsized on the left side of the road and consequently, the claimant, who was travelling in the said Minidor Van, had sustained grievous injuries. He has filed the claim petition claiming a sum of Rs.10,00,000/- as compensation.

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 transportation Corporation and awarded a sum of Rs.6,36,701/- with interest at 9% per annum. Aggrieved by the same, the appellant Transport Corporation has filed the present appeal.

4. Learned counsel appearing for the appellant/Transport Corporation questioned the quantum of compensation awarded by the Tribunal and thereby he contended that the amount awarded by the Tribunal is excessive, exorbitant and without any justification. He further submitted that the learned Tribunal has failed to take note of the deposition of R.W. - an eyewitness to the accident, who has deposed that the accident had occurred only due to the overtaking of the driver of the Minidor on the right side of the bus. Therefore, exorbitant compensation awarded by the Tribunal will have to be set aside.

5. Learned counsel appearing for the first respondent/claimant submitted that the Tribunal had considered all the relevant materials and evidence on record and came to the right conclusion and awarded a just, fair and reasonable compensation. Hence, the award passed by the Tribunal is in accordance with law and the same has to be confirmed.

6. Heard the learned counsel appearing on either side and perused the materials available before this Court.

7. It is not in dispute that the claimant had met with an accident on 20.01.2008, while he was proceeding in a Minidor Van near Paiyur Petrol Bunk at Dharmapuri-Krishnagiri NH road, whereby a bus belonging to the appellant transport Corporation driven by its driver dashed against the said Minidor Van and as a result, the said Mindor van capsized on the left side of the road and consequently, the claimant, who was proceeding in the said Van, sustained grievous injuries. Immediately after the accident, he was taken to Government Community Health Centre, Kaveripattinam, for giving first aid. Since his condition was

very serious, he was referred to NIMHANS Hospital, Bangalore, wherein he was admitted as inpatient for one day and then he was taken to Government Salem Mohan Kumaramangalam Medical College Hospital, Krishnagiri, wherein he was admitted as inpatient. From the medical records as well as from the evidence of P.W. - Doctor, it is seen that the claimant had suffered a right side hemiplegia, which means paralysis of one side of the body. It is also further seen from Ex.P.2 - wound certificate issued by the Medical Officer, Government Community Health Centre, Kaveripattinam that the claimant had undergone nine surgeries. It is also seen from Ex.P.3 - inpatient book issued by the Salem Government Hospital that the claimant had suffered fracture of C1, C2 with hemiplegia with fracture of right clavical and he was admitted in the said hospital as inpatient between 24.01.2008 and 23.02.2008. A xerox copy of the emergency case records issued by the NIMHANS Hospital, Bangalore, marked as Ex.P7, shows that he had suffered right sided hemiplegia. Thus, by analyzing all the above said aspects, the Doctor-P.W.2 issued the disability certificate, marked as Ex.P.13 assessing the permanent disability at 60%.

8. The Tribunal, by taking note of the above said untold sufferings faced by the claimant, adopted the multiplier method and it has further fixed Rs.5000/- as his monthly income as he was doing business in sweet potato. The claimant was aged about 35 years at the time of accident. Therefore, the Tribunal, by adopting multiplier '16' as per the Sarla Verma v. Delhi Transport Corporation ((2009) 6 SCC 121), has rightly awarded a sum of Rs.5,76,000/- ($5000 \times 60\% \times 12 \times 16$) towards loss of income, hence, the same need not be interfered with.

9. The Tribunal has also further awarded a sum of Rs.12,701/- towards medical expenses, Rs.3000/- towards Nutritious Food, Rs.5000/- towards attender expenses, Rs.20000/- towards pain and suffering and Rs.20,000/- towards loss of amenities. Such compensations awarded by the Tribunal, in my view, are just and reasonable compensation in view of the above said untold hardship faced by the claimant as stated above. To recover from grave hardship, he is even now taking treatment as seen from the materials available before this Court.

10. Thus, for the reasons stated above, the present Civil Miscellaneous Appeal fails and the same is dismissed. The appellant-Transport Corporation is directed to deposit the entire award amount of Rs.6,36,701/- to the credit of MCOP No.400 of 2008 on the file of the Additional Subordinate Judge, Krishnagiri, less the amount already deposited if any, within a period of four weeks from the date of receipt of a copy of this

judgment. On such deposit, the claimants are permitted to withdraw the entire award amount along with accrued interest therein, by moving appropriate application. No Costs. M.P.No.1 of 2015 is closed.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

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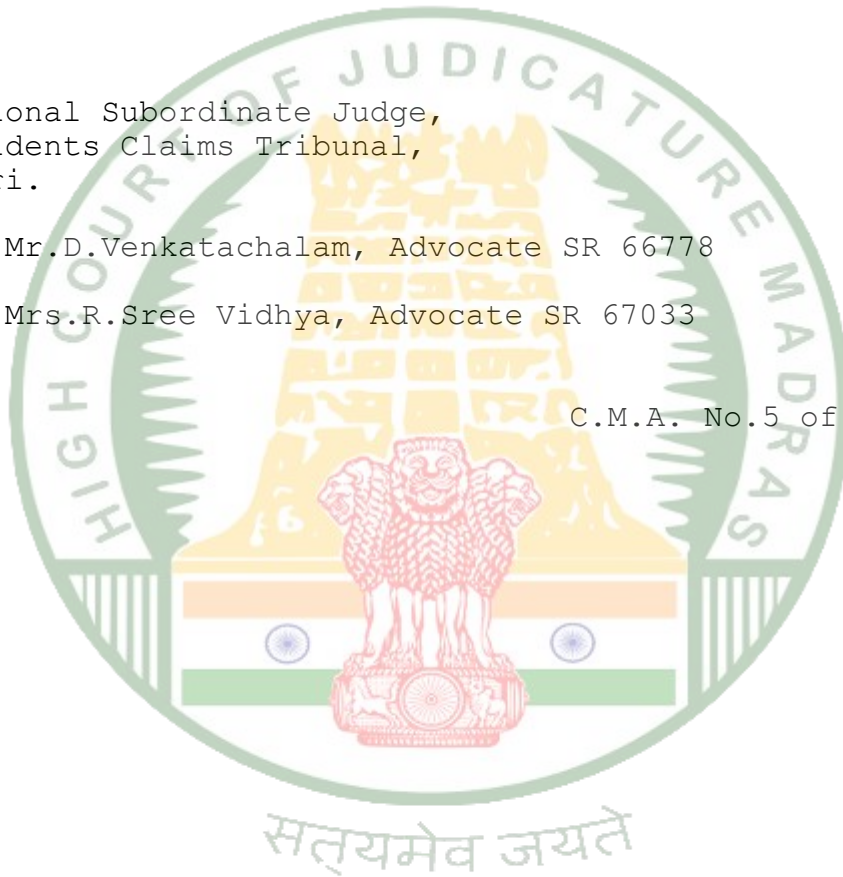
The Additional Subordinate Judge,
Motor Accidents Claims Tribunal,
Krishnagiri.

+ 1 cc to Mr.D.Venkatachalam, Advocate SR 66778

+ 1 cc to Mrs.R.Sree Vidhya, Advocate SR 67033

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