

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2015

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THE HONOURABLE MR. JUSTICE T.RAJA

C.M.A.NO.2947 OF 2010

Muniyappan

... Appellant/Petitioner

Vs.

The Managing Director,
Tamil Nadu State Transport Corporation,
(Salem) Ltd., Bharathipuram,
Dharmapuri.

... Respondent/Respondent

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act against the Judgment and Decree made in M.C.O.P.No.208 of 2008 dated 01.12.2009 on the file of the Motor Accident Claims Tribunal-cum-Chief Judicial Magistrate, Dharmapuri.

For Appellant : Mr.M.Selvam

For Respondent : Mr.D.Venkatachalam

JUDGMENT

Muniyappan, who lost his two teeth in the accident took place on 16.09.2007, is before this Court against the award of Rs.10,000/- of compensation for the injuries sustained by him.

2. While the Claimant/appellant was proceeding in his TVS 50 XL Moped from Mathikonpalayam to Dharmapuri Railyway Station along with his wife as a pillion rider carefully and cautiously by following traffic rules and regulations at about 11.15 p.m. on the fateful day, i.e., on 16.09.2007, the offending vehicle belonging to the Tamil Nadu State Transport Corporation bus bearing registration No.TN 29 N 1757 driven by its Driver in a rash and negligent manner came and dashed on the claimant's moped and caused the accident, due to which, the major part of the moped was smashed and he fell down along with the vehicle. As a result of the accident, the claimant sustained grievous injuries and he got laceration in right leg and lost

two teeth. Hence, he made a claim for a sum of Rs.2,00,000/- with interest at the rate of 12%.

3. The claim of the appellant was refuted by the respondent in their counter-affidavit before the Tribunal stating that the accident had occurred due to the rash and negligent driving of the TVS 50 XL Moped by the Claimant and there is a head on collision of two vehicles, and therefore, the owner and the insurance company of the said TVS 50 are also jointly and severely responsible.

4. The learned Judge of the Tribunal, after considering the evidence adduced by both sides, has passed the award directing the respondent to pay a sum of Rs.10,000/- with interest at the rate of 9%.

5.0. The learned counsel appearing for the claimant, while assailing the findings and conclusion reached by the Tribunal, vehemently contended before this Court that when the injured produced the disability certificate issued by the Doctor, who was examined as P.W.2, to the effect that he suffered 15% disability, the Tribunal is not correct in ordering the compensation of Rs.10,000/- alone against the claim of Rs.2,00,000/-.

5.1. The learned counsel for the appellant submitted that it is an admitted case of the injured that he met with an accident on 16.09.2007 at about 11.15 p.m., while he was proceeding in his TVS 50 XL Moped from Mathikonpalayam to Dharmapuri Railway Station along with his wife as a pillion rider, in which, he sustained injuries, apart from losing two teeth, one tooth at the time of accident and subsequently, another tooth and this has been properly explained by the Doctor, P.W.2, with the support of the Disability Certificate, Ex.P.4, certifying that the injured suffered 15% disability. But the learned Tribunal Judge, without discussing the pain and sufferings underwent by the injured due to the loss of first tooth on the date of accident and another tooth subsequently, the medical expenses incurred by the injured and transport expenses and even without discussing the disability part, after accepting 15% disability, has wrongly fixed only a sum of Rs.10,000/-, which shows that the Tribunal has not fully applied its mind to the evidence produced by the claimant.

5.2. Adding further, the learned counsel would submit that to substantiate his claim, the Claimant examined the Doctor, who deposed as P.W.2 and issued disability certificate, Ex.P.4, and produced the wound certificate which has been marked as Ex.P.2 and the Motor Vehicle Inspector's Report which has

been marked as Ex.P.3 apart from the First Information Report, Ex.P.1. But the learned Tribunal, without discussing any of the evidence and documents, refused to consider the prayer portion and thereby granting only a sum of Rs.10,000/- is nothing but not suiting the claim. Therefore, he would submit that if Rs.2,000/- per percentage of disability is fixed, for the 15% disability, a sum of Rs.30,000/- ought to have been granted by the Tribunal. This has not been done. Therefore, this apparent error is to be rectified by allowing the appeal.

5.3. The learned counsel for the Appellant would also submit that with regard to pain and sufferings, no amount has been awarded. Similarly, towards medical expenses also nothing has been discussed. He would further submit that minimum of Rs.10,000/- should be given for transport expenses.

6. The learned counsel for the respondent Corporation would submit that although the claimant sought for compensation under various heads, namely, medical expenses, transportation expenses and pain and sufferings, no medical records have been produced. Therefore, the Tribunal was right in not awarding any amount towards those heads and for pain and sufferings also, no fault can be attributed on the Tribunal.

7. This Court is not able to find any justification in the contentions raised by the learned counsel for the Transport Corporation. Admittedly, the learned Tribunal in the present case has accepted the case of the claimant that the accident had occurred due to the rash and negligent driving of the bus belonging to the Transport Corporation by its Driver on 16.09.2007. This has been supported by the registration of the First Information Report, which was marked as Ex.P.1.

8. Therefore, when the injured, after sustaining injuries in the accident caused by the Driver of the offending vehicle belonging to the transport Corporation, has given complaint accusing the Driver as a offender, which was in turn, registered as First Information Report, without there being any contrary evidence, and after accepting the cause of accident and also negligence on the part of the offending vehicle, in my considered opinion, the learned Tribunal is not right in awarding a sum of Rs.10,000/- as compensation.

9. It is not known as to why no amount has been fixed towards disability. The Tribunal has accepted that the injured suffered 15% disability. Even if Rs.2,000/- per percentage of disability is fixed, the petitioner is entitled to get more amount, i.e., he is entitled to get Rs.30,000/-. Therefore, this Court is inclined to fix Rs.2,000/- per percentage of disability

and accordingly, sum of Rs.30,000/- has to be awarded for disability. Since no amount has been awarded towards pain and sufferings, a sum of Rs.25,000/- has to be awarded towards pain and sufferings. Since the injured lost two teeth, a sum of Rs.25,000/- has to be awarded towards medical expenses and a sum of Rs.5,000/- has to be awarded towards Transportation expenses. It is just to award a sum of Rs.15,000/- towards extra nourishment.

10. For all these reasons, the appeal stands allowed and the Judgment and Decree passed by the Motor Accident Claims Tribunal-cum-Chief Judicial Magistrate, Dharmapuri in M.C.O.P.No.208 of 2008 dated 01.12.2009 is modified enhancing the compensation to Rs.1,00,000/- under the following heads:

For 15% Disability (Rs.2,000/- -- Rs. 30,000/- per percentage)	
For pain and sufferings	-- Rs. 25,000/-
For Medical Expenses	-- Rs. 25,000/-
For Transportation Expenses	-- Rs. 5,000/-
For Extra-Nourishment	-- Rs. 15,000/-

	Rs.1,00,000/-

11. It is submitted that a sum of Rs.10,000/-, that has been awarded by the Tribunal, has been deposited by the respondent / Transport Corporation. The respondent is hereby directed to deposit the balance amount of Rs.90,000/- along with interest at the rate of 7.5% p.a. within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, it is open to the claimant to withdraw the amount so deposited along with interest. No costs.

Sd/-

Assistant Registrar(CS III)

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To

The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Dharmapuri.

Sub Assistant Registrar

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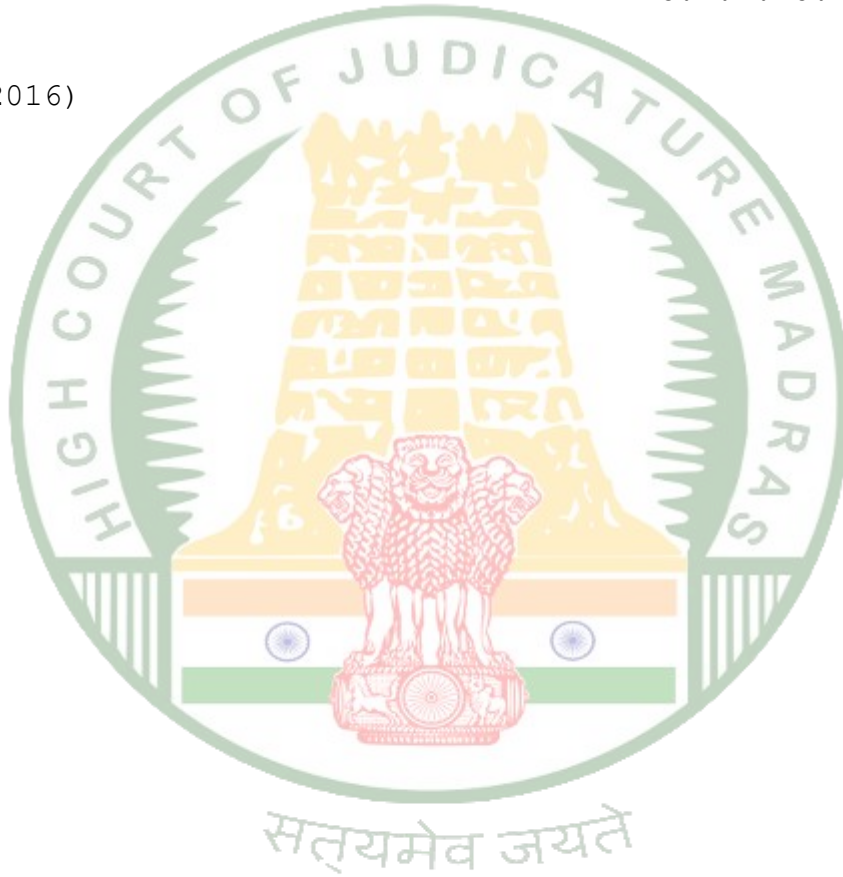
Copy To

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

+1cc to Mr.D.Venkatachalam, Advocate, S.R.No.68439
+1cc to Mr.M.Selvam, Advocate, S.R.No.68575

C.M.A.NO.2947 OF 2010

JSV(CO)
CA(04/05/2016)



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