

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.08.2015

CORAM

THE HON'BLE MR.JUSTICE C.S.KARNAN

C.M.A.No.3023 of 2012

G.P.Zakir Hussain

...Appellant/Petitioner

vs

1. Ramasamy

2. The Managing Director,
Tamil Nadu State Transport Corporation Limited,
Kovai Division-2,
Chennimalai Road, Erode. ...Respondents/Respondents

(The 1st respondent has already been
set exparte before the Tribunal.
Hence, notice may be dispensed
with this appeal)

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, for enhancement of the Compensation amount awarded in the Judgment and Decree dated 29.09.2008 made in M.C.O.P.No.12 of 2007 on the file of Motor Accidents Claims Tribunal / Fast Track Court-2, Gobichettipalayam.

For Appellant : Mr.Ma.P.Thangavel

For Respondents : Mr.S.V.Vasanthakumar (for R2)
R1 - Exparte

JUDGMENT

On 30.09.2003, at about 9.30 a.m., when the appellant herein was proceeding on his TVS-50 moped, from Gobichettipalayam to Erode main road, on the left side of the road, the bus bearing Registration No.TN-33-N-0766, coming in the opposite direction and driven at a high speed dashed against him. As a result, he and his two children sustained injuries. Hence, the petitioner has filed claim petition in M.C.O.P.No.12 of 2007, on the file of Motor Accident Claims Tribunal / Fast Track Court-2, Gobichettipalayam.

2.The 2nd respondent / Transport Corporation has filed counter statement and resisted the same. After contest, the Tribunal had awarded compensation of a sum of Rs.41,000/- with interest at the rate of 7.5% per annum. Not being satisfied with the quantum of compensation, the claimant has filed the above appeal for additional compensation of a sum of Rs.1,00,000/-.

3.The highly competent counsel Mr.Ma.P.Thangavel appearing for the appellant submits that the 2nd respondent bus dashed against the claimant's vehicle. Hence, a criminal case was registered against the driver of the offending bus. On the side of the claimant, 23 documents were marked as common evidence and 3 witnesses were examined. On the side of the respondents, no one was examined. The learned counsel further submits that the negligence had been proved against the respondent. The claimant has sustained multiple bone fracture injuries on the right side of his head, left arm and left hand fingers. Hence, he was admitted at Government Hospital, Gobichettipalayam for preliminary treatment and thereafter he was admitted at Erode Hospital for better treatment. The Doctor had also adduced evidence stating that the claimant's 3rd finger of left hand had been fractured and malunited and that the movements of left hand joint had been restricted to 19°. After accident, the claimant is unable to attend his duty as Junior Assistant, attached to the Revenue Taluk Office, Gobichettipalayam. The claimant had undergone treatment as inpatient as well as outpatient for a total period of around from three months. Further, the Tribunal had framed necessary issues and decided the same against the Transport Corporation. Hence, the highly competent counsel entreats the Court to grant an adequate compensation of a sum of Rs.1,00,000/- with interest from the date of claim petition.

4.Per contra, the very competent counsel Mr.S.V.Vasanthakumar, appearing for the second respondent submits that the accident was not

committed by the driver of the bus. In the said accident, two vehicles had been involved and as such contributory negligence has to be attributed, but the same was not followed. Further, the claimant has not proved his case regarding income, medical expenses, mode of treatment and loss of income during medical treatment period. The Doctor had assessed the disability at 30% which is on the higher side as the claimant had sustained simple injuries. However, the Tribunal had granted adequate compensation to the claimant.

5. In reply, the learned counsel Mr. Ma. P. Thangavel submits that the Tribunal had not granted compensation under the heads of Transport, attender charges, loss of earning during medical treatment period and loss of amenities. Further, the claimant is aged about 32 years and he is a Government Employee attached to the revenue department. After the accident, the claimant could not attend his office. His monthly income was Rs. 6,209/- plus allowances. Hence, the learned counsel entreats the Court to allow the appeal.

6. On considering the facts and circumstances of the case and arguments advanced by the very competent counsels on either side and on perusing the typed set of papers, this Court is of the view that the Tribunal had not granted sufficient compensation to the claimant. Hence, this Court is inclined to grant additional compensation as follows:-

Rs. 30,000/- is awarded under the head of disability; Rs. 12,000/- under the head of pain and suffering; Rs. 5,000/- for attender charges; Rs. 5,000/- for transport; Rs. 20,000/- for loss of income during medical treatment period; Rs. 3,000/- under the head of nutrition and Rs. 25,000/- under the head of loss of amenities, since the claimant had sustained bone fracture injuries on his left hand. In total, this Court awards Rs. 1,00,000/- as additional compensation. This amount will carry interest at the rate of 7.5% per annum from the date of claim petition till date of deposit.

7. As such, the above appeal is allowed. This Court directs the 2nd respondent herein / State Transport Corporation to deposit the additional award amount with interest, as per this Court's findings, within a period of twelve weeks from the date of receipt of this order. After such deposit being made, it is open to the claimant to withdraw the said entire amount, after filing a memo, along with a copy of this order before the trial Court.

8. In the result, the above appeal is allowed. Consequently, the Judgment and Decree passed in M.C.O.P.No.12 of 2007, on the file of

the Motor Accident Claims Tribunal / Fast Track Court-2,
Gobichettipalayam, dated 29.09.2008, is modified. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

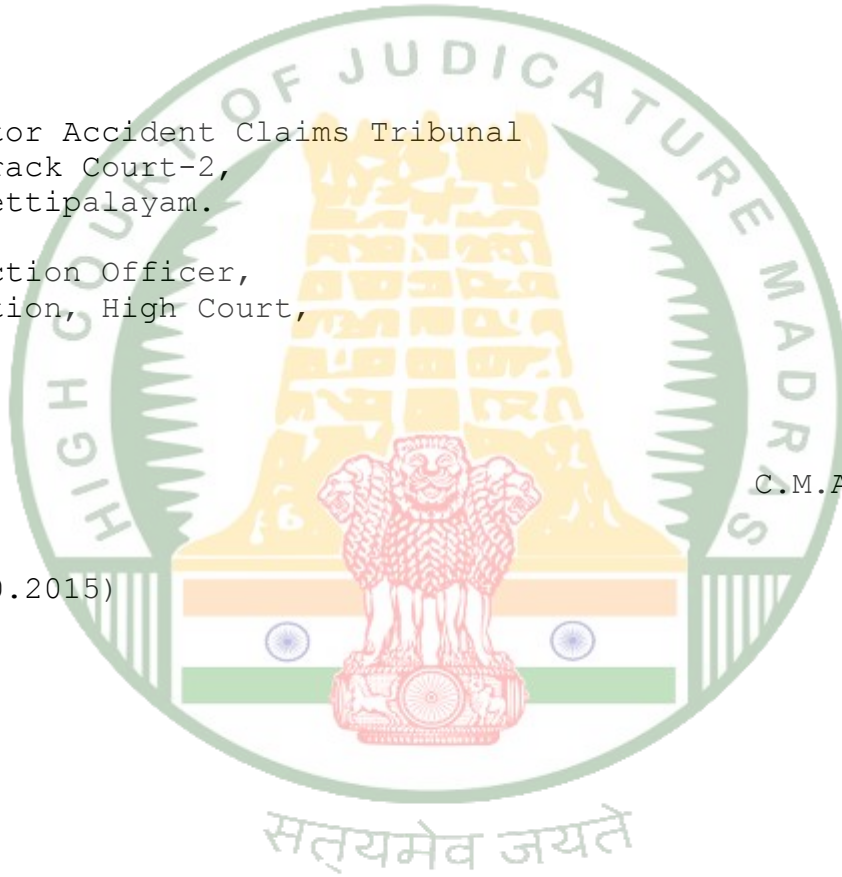
vs

To

1. The Motor Accident Claims Tribunal
Fast Track Court-2,
Gobichettipalayam.
2. The Section Officer,
VR Section, High Court,
Madras.

C.M.A.No.3023 of 2012

PA (CO)
PSI (12.10.2015)



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