

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.04.2016

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

C.M.A.No. 1047 of 2016

and

C.M.P.No.7981 of 2016

The Managing Director
Tamil Nadu State Transport Corporation (Salem)
Limited, Ramakrishna Road,
Salem.

... Appellant/Ist Respondent

vs.

1.Ramasamy

S/o.Thimmarayappa

Mentally unfit person,

rep.by his next friend and

mother Lakshmi w/o.Thimmarayappa ... IstRespondent/Petitioner

2.Mr.M.Venkatesh

3.The Manager,

Reliance General Ins.Co.Ltd.,

Registered Office, Reliance Centre,

No.29, Walchand, Hirachand Marg,

Bellared Estate, Mumbai-400 001

...2 &3rd Respondents/2 &3

Respondents

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree, dated 31.07.2013, passed in M.C.O.P.No.1446 of 2013, on the file of the Special Sub-Judge (MACT), Krishnagiri.

For Appellant :Mr.D.Venkatachalam

For Respondent-1 :Mr.Mukund R.Pandiyan

-3 :Mr.K.Moorthy

JUDGMENT

The Transport Corporation has preferred this Civil Miscellaneous Appeal challenging the Judgment and decree dated 31.07.2013 passed in M.C.O.P.No.1446 of 2013, on the file of the Motor Accidents Claims Tribunal, Special Sub-Judge, Krishnagiri.

2. Heard the learned counsel for the appellant and perused the materials available on record.

3. This is a case of injury. The accident took place on 13.09.2008 at 8.30 a.m., when the claimant was trying to board into the Government Bus bearing Registration No.TN-29/N-1604 at Dekanikottai Bus stand. At that time, the driver of the bus moved the bus rashly and negligently without noticing as to whether the claimant has boarded the bus or not. At the same time, the driver of the Tempo bearing Registration No.KA.02/C.361, belonging to the 2nd respondent and insured with the 3rd respondent, moved the tempo on the reverse direction in a rash and negligent manner and hit against the claimant, due to which, the claimant fell down and sustained multiple injuries. The claimant approached the Tribunal claiming compensation to the tune of Rs.8,00,000/-.

4. The Tribunal, taking into account the oral and documentary evidence, granted compensation to the tune of Rs.6,00,482/- with 6% interest per annum, by directing the 3rd respondent and the appellant to pay the compensation in the ratio of 50:50 to the claimant, by holding that the accident was due to the rash and negligent driving of both vehicle drivers viz., driver of the tempo which belongs to the 2nd respondent and the Bus driver. Aggrieved over the same, the Transport Corporation is before this Court.

5. According to the claimant, the driver of the appellant transport bus, suddenly moved the bus without noticing whether he boarded the bus completely or not and that the driver of the tempo, drove the tempo, bearing Registration No.KA.02/C.361, in a rash and negligent manner, on the reverse direction and hit against him and due to which, he fell down and sustained injuries.

6. The learned counsel appearing for the Transport Corporation contended that the claimant has lost his control and fell down from the MTC Bus and it is due to the act of the tempo driver, who took the tempo in the reverse direction in a rash and negligent manner and hit against the claimant and caused the accident and as such, the driver of the Bus is in no way responsible to pay any compensation to the claimant. It is also submitted that the Tribunal erred in fixing the negligence as 50% : 50% against both vehicles and he further contended that the compensation awarded by the Tribunal is on the higher side.

7. The claimant, who is a Mason, aged 20 years, sustained injury in the accident that took place on 13.09.2008. In the said accident, there was a fracture on the right parietal bone of scalp and the Doctor has assessed the disability at 60%,

which was reduced to 55% by the Tribunal. The injured had taken treatment at Government Hospital, Denkanikottai and thereafter at NIHMANS Hospital and at Victoria Hospital, Bangalore. At the time of accident, the driver of the bus suddenly moved the bus, without noticing whether the claimant has boarded the bus completely or not and the driver of the tempo, in a rash and negligent manner, moved the tempo in the reverse direction and hit against the claimant, thereby caused the accident, due to which, the claimant sustained multiple injuries. Taking into account the wound certificates - Exs.P2 to P4, Ex.P8- the treatment book from the Government Dental Hospital, Bangalore, Ex.P.11 and Ex.P.12 - the C.T.Scan reports and Ex.P.13 - the Disability certificate, and also taking note of the fact that a perusal of the medical records reveal that the claimant was hit by a heavy vehicle, the Tribunal, has come to the conclusion that the accident happened due to the rash and negligent driving of both the drivers and therefore, contributory negligence of 50% on the part of the drivers of both the vehicle was fixed, which, in my opinion, is justified. The Tribunal awarded compensation to the tune of Rs.6,00,482/- based on Exs.P.2 and P.4, Exs.P.11 and P.12 together with the disability certificate Ex.P.13. issued by P.W.2 - Dr.T.V.Gandhi, to the effect that there was loss of earning capacity. I find that for the injuries sustained by the claimant as stated by P.W.2 Doctor and based on the disability certificate, the award of the Tribunal is perfectly justified. Hence, taking note of the totality of the circumstances, I find no reason to interfere with the award of the Tribunal.

8. In the above circumstances, finding no merit, by confirming the award of the Tribunal, the Civil Miscellaneous Appeal is dismissed. The rate of interest granted by the Tribunal is also confirmed. The appellant Transport Corporation is directed to deposit their share of the award amount together with interest to the credit of MCOP No.1446 of 2013, on the file of the Motor Accident Claims Tribunal (Special Sub Judge), Krishnagiri, if not already deposited, within a period of eight weeks from the date of receipt of a copy of this order and on such deposit being made, the claimant is entitled to withdraw the same on filing necessary application before the Tribunal. There will be no order as to costs in this appeal. Connected miscellaneous petition is closed.

-s/d-

Assistant Registrar(CSV)

True Copy

Sub-Assistant Registrar

msk

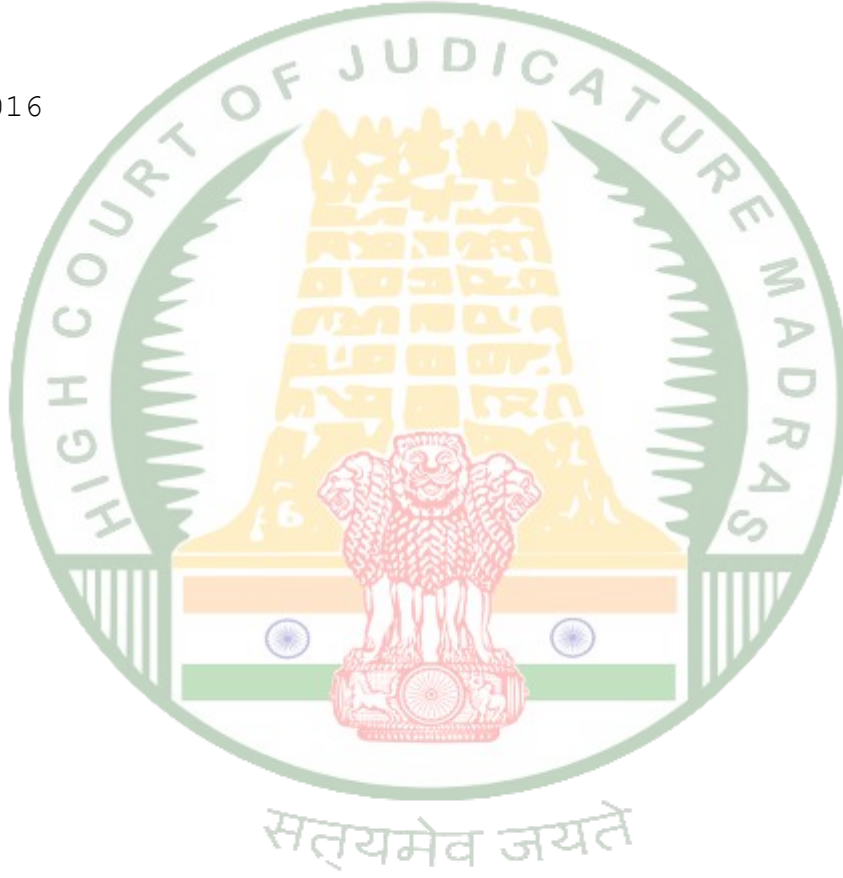
To

The Motor Accidents Claims Tribunal
Special Sub Judge, Krishnagiri.

+1 cc to Mr.D.Venkatachalam Advocate sr.29031/16

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