

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2016

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

C.M.A.No.1000 of 2016

The Managing Director
Tamil Nadu State Transport Corporation
Rangampalayam Post,
Erode. Appellant/2nd Respondent

Vs.

1. P.Arunkumar
2. S.Vijayakumar
3. S.K.Manikandan
4. United India Insurance Company Ltd.,
144-B, Kalpana Salai,
Udumalaipet,
and carries on business at
Divisional officer,
Mathaiyan Complex,
2nd Floor, 1170-1171, EVE,
(Mettur) Road, Erode - 11.
(R2 not necessary party, hence given up)

... Respondents/Respondents

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 28.08.2014 passed in M.C.O.P.No.263 of 2013 on the file of the Motor Accidents Claims Tribunal, Special Sub Court, Erode.

For Appellant : Mr.V.Udayakumar

JUDGMENT

The Transport Corporation has preferred this Civil Miscellaneous Appeal challenging the quantum of compensation awarded by the Motor Accidents Claims Tribunal, Special Sub Court, Erode in M.C.O.P.No.263 of 2012.

2. This is a case of injury. In an accident that took place on 18.01.2009 at 11.30 hours, when the claimant was driving his Motorcycle bearing Registration No.TN-38-AJ-3724 in Ayar-Pollachi High Road, near Puliyakandhi along with one Venkatesan, the bus bearing Registration No.TN-33-N-1523 driven by the first respondent came in a rash and negligent manner, hit against the claimant's motorcycle, resulting in the said Venkatesan and the claimant sustaining multiple injuries. The said Venkatesan died in the hospital during treatment. The claimant approached the Tribunal claiming compensation to the tune of Rs.5,00,000/-.

3. The Tribunal, after discussing the evidences held that the accident had occurred due to negligent act of both the vehicle drivers viz., driver of the motorcycle and the Bus driver of the second respondent and fastened the liability as 50:50. However, the Tribunal has stated that the accident was due to the rash and negligent driving of the 2nd respondent Bus driver. Aggrieved over the same, the Transport Corporation is before this Court.

4. According to the claimant, the 2nd respondent drove the bus bearing Registration No.TN-33-N-1523 in a rash and negligent manner, hit against the claimant's motorcycle due to which, one Venkatesan and the claimant fell down and sustained injuries and the said Venkatesan who was a pillion rider of the motorcycle died during treatment. Both vehicles were inspected by the Motor Vehicles Inspector and report was filed in Exs.P3 and P4.

5. The learned counsel appearing for the Transport Corporation contended that only due to the rash and negligent driving of the appellant, the accident had occurred and the driver of the Bus was no way responsible to pay any compensation to the claimant and he further contended that the compensation awarded by the Tribunal is also on the higher side. It is also contended that though the driver of the bus had stopped the vehicle before 100 feet on seeing the manner in which the claimant drove his vehicle, it is just because of the claimant who came in a rash and negligent manner, the accident had taken place.

6. A bare reading of the reports of vehicles (Exs.P3 and P4) and going through the evidences would establish that the version of the driver of the Transport Corporation bus that he stopped the vehicle 100 feet away is not justified. If he would have stopped his vehicle, then the damages would have been different nature. The Tribunal taking note of the evidence of the driver as well as Arunkumar, Claimant, fastened contributory negligence at 50: 50% on both the persons and awarded compensation under various heads. Since the appellant suffered fracture in the right thigh, right knee and the doctor has assessed the disability at 48% and since there is no contra evidence by the third respondent, the Tribunal came to the conclusion that the claimant should be entitled to Rs.2,000/- per percentage and awarded compensation at Rs.96,000/- for 48% disability. By fixing the monthly income at Rs.4,500/-, the Tribunal has awarded compensation at Rs.45,000/- under the head loss of earning power. The Tribunal has also granted compensation under other conventional heads. In all, a sum of Rs.4,36,680/- was granted to the claimant.

7. The Honourable Apex Court, in the judgment rendered in Syed Sadiq V. Divisional Manager, United India Insurance Co. Ltd reported in 2014 (1) TN MAC 459 (SC), in respect of a vegetable vendor, who sustained injuries in an accident which occurred in 2008, determined Rs.6500/- as the monthly income. Taking note of the Syed's case referred to above, since the accident in this case had occurred in the year 2009, I am of the view that the Tribunal has not committed any error in taking the monthly income of the deceased as Rs.4,500/-.

8. As far as the contention with regard to fixation of percentage of negligence, the Tribunal came to the conclusion that the accident occurred due to the rash and negligent driving of the drivers of the vehicles and the Tribunal has rightly fixed the negligence on the driver of the appellant bus at 50% and that the driver of the bus could no way can be exempted from the accident which resulted in the death of the pillion rider. Hence, this Court is of the view that the same cannot be said to be excessive as the driver of the Bus as well as the claimant are responsible for the accident.

9. In view of the above, this Court finds no reason to interfere with the award of the Tribunal and hence the appeal is dismissed. No costs. Connected miscellaneous petition is closed.

10. The Appellant Transport Corporation is directed to deposit the entire award amount together with proportionate costs and interest @ 7.5% per annum from the date of claim petition, before the Tribunal, to the credit of M.C.O.P.No.263

of 2013 on the file of the Motor Accidents Claims Tribunal, Special Sub Court, Erode, within a period of four weeks from the date of receipt of a copy of this order and on such deposit being made, the first respondent herein/claimant is entitled to make necessary applications to withdraw the the same, before the Tribunal. There will be no order as to costs in this appeal. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

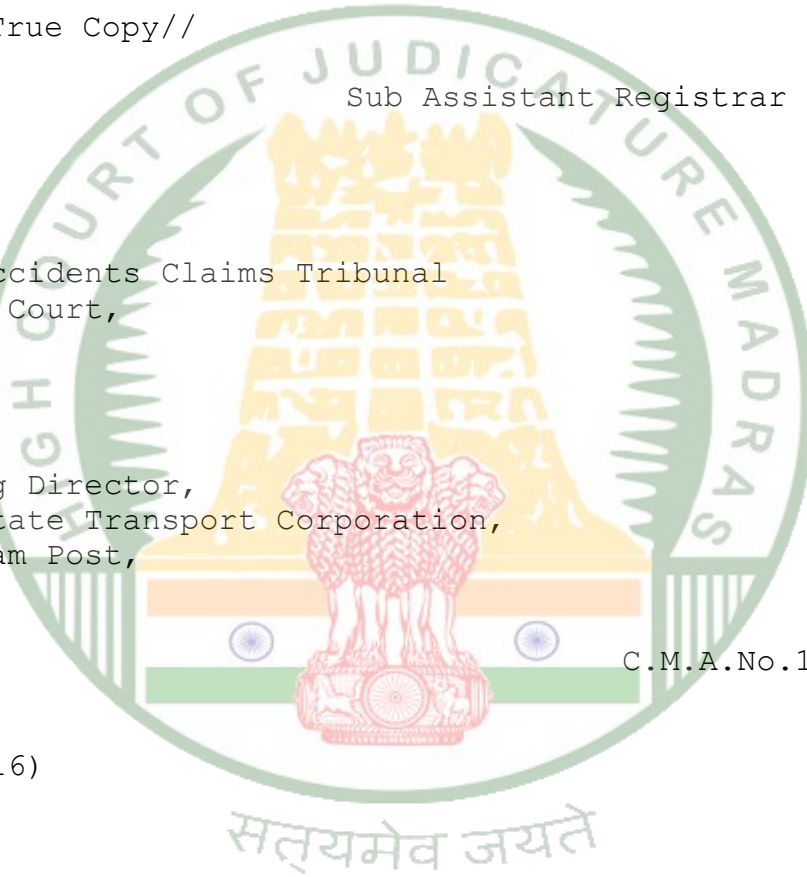
The Motor Accidents Claims Tribunal
Special Sub Court,
Erode.

Copy To

The Managing Director,
Tamilnadu State Transport Corporation,
Rangampalayam Post,
Erode.

C.M.A.No.1000 of 2016

RSK (CO)
CA(27/06/2016)



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