

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.09.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.2004 of 2016

The Managing Director
Tamil Nadu State Transport Corporation
Villupuram .. Appellant/ Respondent

-vs-

Kasinathan
S/o Rajamanikam ... Respondent/ Petitioner

Memorandum of Grounds of Civil Miscellaneous Appeal under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 30.11.2015 made in M.C.O.P.No.87 of 2014 on the file of the Motor Accident Claims Tribunal, III Additional District & Sessions Judge, Cuddalore at Vridhachalam.

For Appellant :: Mr.S.Sairaman

JUDGMENT

The Managing Director of Tamil Nadu State Transport Corporation Limited, Villupuram has challenged the impugned award passed by the Motor Accident Claims Tribunal, III Additional District & Sessions Judge, Cuddalore at Vridhachalam in M.C.O.P.No.87 of 2014 dated 30.11.2015 awarding a sum of Rs.1,89,000/-, as against the claim of Rs.5,00,000/-, for the injuries sustained by the claimant/passenger while travelling in the bus belonging to the appellant Corporation, on the ground that the quantum fixed by the Tribunal is unsustainable in the eye of law.

2. Mr.S.Sairaman, learned counsel for the appellant Corporation submitted that when the injured claimant was travelling in the bus belonging to the Corporation bearing Registration No.TN 32 N 2265 from Valliyam village to Melaparaiyur, since the bus stopped in the bus stand at

Melaparaiyur to enable the claimant to get down, while descending from the bus, the claimant fell down on his own and sustained grievous injuries. However, the Tribunal has completely misdirected itself to come to the conclusion that only due to the rash and negligent driving of the bus driver, the accident had occurred and consequently the claimant sustained grievous injuries.

3. This contention does not carry weight. It is not in dispute that the injured claimant was travelling in the bus bearing Registration No.TN 32 N 2265 from Valliyam village to Melaparaiyur on 28.12.2013 at about 6.30 hours and when the bus stopped in the bus stand at Melaparaiyur for the claimant/passenger to get down, before he could get down from the bus, the driver of the bus, in a rash and negligent manner, moved the bus, as a result the injured fell down and sustained grievous injuries, without even seeing whether the passenger had descended. Therefore the Tribunal has rightly come to the conclusion that the driver of the bus was the cause for the accident. Even before reaching this conclusion, it has also considered the evidence adduced by P.W.1-injured about the accident as well as the negligent act on the part of the offending driver of the bus belonging to the Corporation. Secondly, the First Information Report-Ex.P1 registered against the driver of the bus has also clearly indicated that the driver of the bus alone was negligent in moving the bus, which has resulted in the accident. Moreover, Ex.P4, the report of the Motor Vehicle Inspector also revealed that the accident was not due to any mechanical defect. Thirdly, on the side of the appellant Corporation, neither oral nor documentary evidence were produced to disprove the evidence of P.W.1, which remained unchallenged. When there was no contra evidence to the evidence of P.W.1, the Tribunal, considering the evidence of P.W.1 and the copies of the First Information Report and the report of the Motor Vehicle Inspector marked as Exs.P1 & P4, has rightly come to the conclusion that the accident was due to the fault of the offending driver of the bus belonging to the appellant Corporation. Accordingly, answering the negligence aspect against the driver of the offending vehicle, the Tribunal has rightly come to the conclusion that the owner of the vehicle, namely, the appellant Corporation is liable to compensate the injured claimant.

4. With regard to the second finding as to what is the quantum of compensation payable to the injured, the Tribunal, considering the further evidence adduced by P.W.1-injured that in the accident he had sustained fracture over the right leg, for which he took treatment at the Government Hospital, Vridhachalam and again at Indira Gandhi Government General Hospital, Pondicherry as well as the documentary evidence, namely, the copy of the Accident Register, Ex.P5 issued by Government Hospital, Vridhachalam and the discharge slip, Ex.P6

issued by the Indira Gandhi Government General Hospital, Pondicherry showing that the injured took treatment as an in-patient from 28.12.2013 to 30.1.2014 for more than 30 days and also underwent a surgery on his right femur and right tibia bone and the doctor, P.W.2 had also confirmed the injuries sustained by the claimant, has come to the conclusion that the injured is entitled to get compensation. However, with regard to the compensation under the head of loss of income, although it was claimed by the injured that he was a vegetable vendor and said to have earned Rs.15,000/- per month, in the absence of any sufficient proof shown for the income and occupation, the Tribunal, considering the fact that he was aged about 50 years at the time of accident on the basis of Ex.P5-Accident Register and the accident took place in the year 2013, has reached a conclusion that there was a possibility of earning Rs.200/- per day as a vegetable vendor. On this basis, a reasonable amount of Rs.6,000/- has been taken as the notional monthly income of the injured and considering the fact that for more than one month, the injured was taking treatment and subsequently also was continuously taking treatment as an out-patient, the Tribunal has come to the conclusion that the claimant had lost his monthly income for four months. On this basis, for four months, the loss of income has been fixed at Rs.24,000/- at the rate of Rs.6000/- per month. With regard to the disability sustained by the injured, the Tribunal has fixed the partial permanent disability at 50% and awarded a sum of Rs.1,00,000/- at the rate of Rs.2000/- per percentage of disability. It may be mentioned herein that although the claimant was able to produce the disability certificate issued by the doctor-P.W.2 certifying that the injured suffered 52% partial permanent disability, the Tribunal has fixed only 50% partial permanent disability. Therefore, on this score also, this Court is not able to find any infirmity in the impugned award. With regard to the compensation awarded under the other heads, namely, transportation, extra nourishment, cost of attendant, medical expenses, only a sum of Rs.10,000/- each has been awarded. Since the injured was taking treatment as an in-patient from 28.12.2013 to 30.1.2014, a reasonable sum of Rs.25,000/- has been awarded by the Tribunal towards pain and sufferings. Viewed from any angle, this Court does not find any infirmity in the impugned award fixing a total compensation of Rs.1,89,000/- together with interest at the rate of 7.5% per annum payable by the appellant for the multiple injuries sustained by the claimant/passenger in the accident. Accordingly, the civil miscellaneous appeal fails and it is dismissed. Consequently, C.M.P.No.14473 of 2016 is also dismissed.

5. Since the learned counsel for the appellant submitted that only the statutory amount of Rs.25,000/- has been deposited, the appellant is directed to deposit the entire balance award amount along with interest thereon to the credit of the M.C.O.P.No.87 of 2014 on the file of the Motor Accident

Claims Tribunal (III Additional District & Sessions Judge),
Cuddalore at Vridhachalam within a period of four weeks from the
date of receipt of a copy of this order and on such deposit, it
is for the claimant to withdraw the amount along with accrued
interest by moving appropriate application before the Tribunal.

Sd/-
Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

ss

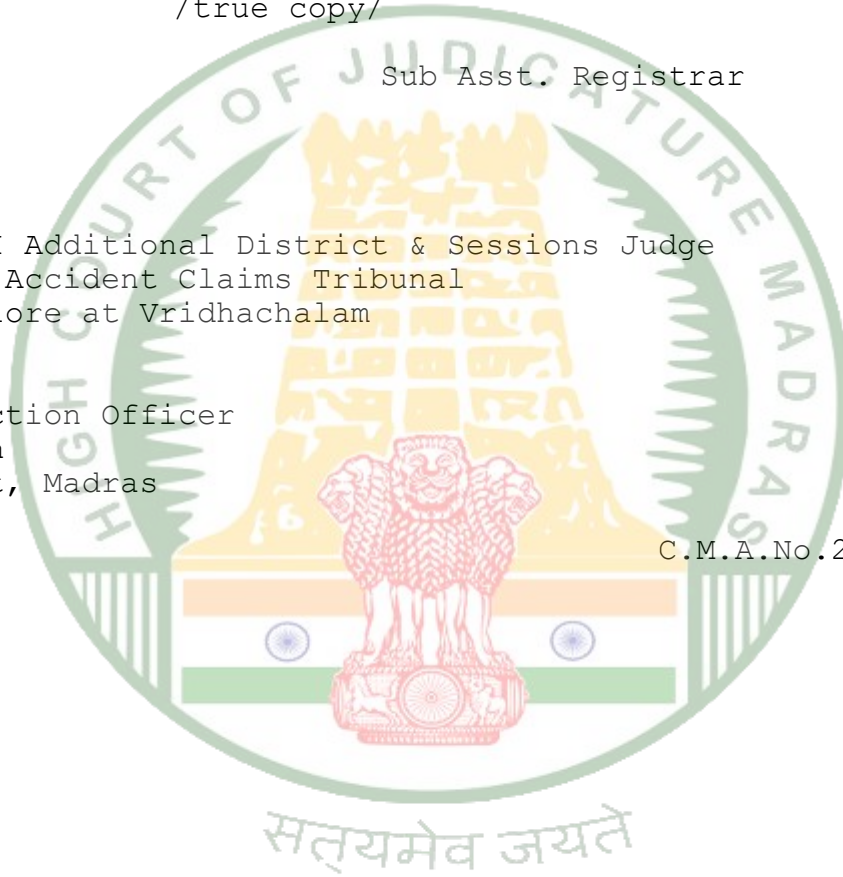
To

1. The III Additional District & Sessions Judge
Motor Accident Claims Tribunal
Cuddalore at Vridhachalam

2. The Section Officer
VR Section
High Court, Madras

C.M.A.No.2004 of 2016

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