

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.09.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.2048 of 2016

The Managing Director
Tamil Nadu State Transport Corporation (VPM) Ltd.,
Villupuram .. Appellant/Respondent

-vs-

Mr.Nethaji Subash Chandrabose
S/o T.R.Karthikeyan ... Respondent/Petitioner

Memorandum of Grounds of Civil Miscellaneous Appeal under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 08.03.2016 made in M.C.O.P.No.2770 of 2011 on the file of the Motor Accident Claims Tribunal, III Judge, Court of Small Causes, Chennai.

For Appellant :: Mr.K.J.Sivakumar
For Respondent :: Mr.S.Ravikumar

JUDGMENT

The Managing Director of Tamil Nadu State Transport Corporation (Villupuram) Limited has brought this appeal challenging the quantum of compensation fixed by the Motor Accident Claims Tribunal, III Judge, Court of Small Causes, Chennai in M.C.O.P.No.2770 of 2011 dated 8.3.2016 disapproving with regard to two aspects, namely, that while fixing the quantum of compensation for the multiple injuries sustained by the injured claimant, a sum of Rs.2,30,400/- has been awarded by the Tribunal towards loss of earning power and also a sum of Rs.25,000/- has been awarded towards future medical expenses. Explaining further, the learned counsel for the appellant Transport Corporation submitted that when the injured claimant has sustained only one fracture in the accident that took place at about 23.00 hours on 8.7.2011 while going inside the Chennai Moffusil Bus Terminus 6th platform from south to north direction, a bus belonging to the appellant Corporation bearing Registration No.TN 25 N 0155 coming from north to south being driven in a rash and negligent manner, dashed against the injured, as a result he was thrown out and consequently sustained grievous injuries, for which he was admitted as an in-patient in the hospital and taking treatment. In the meanwhile,

First Information Report in Crime No.133/KM1/2011 dated 9.7.2011 under Section 338 of IPC and Section 184 of the Motor Vehicles Act was also registered against the driver of the bus belonging to the Corporation and he was also chargesheeted by the police. However, since the injured was admitted in New Hope Indian Specialty Hospital for treatment, after he was discharged on 13.7.2011, he produced the evidence showing that he suffered abrasion in the right lower leg, contusion in the left leg, contusion in left ankle and foot, fracture in the right left tibia junction of middle third and distal third, lacerated injury, for which he claimed 65% disability. But the Tribunal has accepted only 10% disability. While fixing 10% disability, it is not known how the Tribunal was justified in adopting the multiplier '16' for arriving at the sum of Rs.2,30,400/- towards loss of earning power. Therefore the impugned award is liable to be set aside, he pleaded.

2. This Court is not able to agree with the said contentions. The reason is that when the injured claimant, being a Carpenter, was walking inside the Chennai Mofussil Bus Terminus nearer to the 6th platform, at this point of time the offending bus bearing Registration No.TN 25 N 0155 belonging to the appellant Corporation coming from north to south direction was driven in a rash and negligent manner and hit the poor pedestrian, as a result he sustained the following injuries:-

- "1. Abrasion right lower leg
2. Abnormal movement-right lower leg
3. Contusion left leg
4. Contusion left ankle and foot
5. Fracture right left tibia junction of middle third and distal third
6. CHN lacerated injury
7. loss of consciousness presentation
8. right leg and foot lacerated injury
9. As a result of lacerated injuries to chin and as a consequence to brain function with loss of consciousness, right foot, right ankle, injuries, in addition to ankle active movements, gets pain while walking and resilient of right foot loss and metatarsalgia, ankle pain right deformity present and strain on walking with loss of muscle power restricted mobility right ankle cannot stand for some time or walk a considerable distance or climb stairs or sit in a squatting position and his intelligence quotient is below normal."

After the injured claimant sustained the aforementioned multiple injuries, a case in Crime No.133/KM1/2011 dated 9.7.2011 was registered on the file of K-10, Koyambedu Traffic Investigation Police for the offence under Section 338 of IPC and Section 184 of the Motor Vehicles Act against the driver of the bus and that the injured was also admitted as an in-patient in New Hope Indian Specialty Hospital on 8.7.2011 and after taking continuous treatment till 13.7.2011, he was discharged as evidenced from Ex.P4 discharge summary issued by the said hospital. P.W.2-Doctor, who was examined as one of the witnesses on the side of the injured, has also assessed the disability of the claimant at 65%. However, the Tribunal has accepted only 10% disability. Again the Tribunal, placing reliance upon a Division Bench judgment of this Court in 2015 (2) TN MAC 162, though accepted the case of the claimant that he was earning a sum of Rs.12,000/- per month, it has fixed only a sum of Rs.1,200/- out of the said amount at the rate of 10% disability and applied the right multiplier '16' to arrive at the sum of Rs.2,30,400/- towards the loss of earning power i.e., (Rs.1200x12x16=Rs.2,30,400/-). However, the Tribunal, considering the fact that two screws were removed in the tibia of the injured, has awarded a sum of Rs.25,000/- towards future medical expenses, after rejecting the estimate of Rs.1,20,000/- given by Mohan Nursing Home under Ex.P7. Therefore, the two contentions raised by the learned counsel for the appellant cannot be accepted, considering the facts and circumstances of the case. Even otherwise, the Tribunal has awarded only a reasonable sum under the other heads, namely, a sum of Rs.36,000/- towards loss of income for three months at the rate of Rs.12,000/- per month, Rs.1,300/- as attender charges, Rs.2,500/- towards transport to hospital, Rs.10,000/- towards extra nourishment, Rs.63,000/- towards medical bills, Rs.10,000/- towards mental shock and agony, Rs.30,000/- towards pain and suffering, Rs.25,000/- towards loss of amenities. Therefore, this Court is of the considered opinion that the total compensation of Rs.4,33,200/- arrived at by the Tribunal is a just and reasonable compensation for the multiple injuries sustained by the injured claimant in this case. Accordingly, finding no infirmity with the impugned award, the civil miscellaneous appeal is dismissed. Consequently, C.M.P.No.14984 of 2016 is also dismissed.

4. As 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 to the credit of the M.C.O.P.No.2770 of 2011 on the file of the Motor Accidents Claims Tribunal (III Judge, Court of Small Causes), Chennai 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.

s/d-
Assistant Registrar (CS-V)

True Copy

Sub-Assistant Registrar

ss

To

1. The III Judge
Court of Small Causes
Motor Accident Claims Tribunal
Chennai

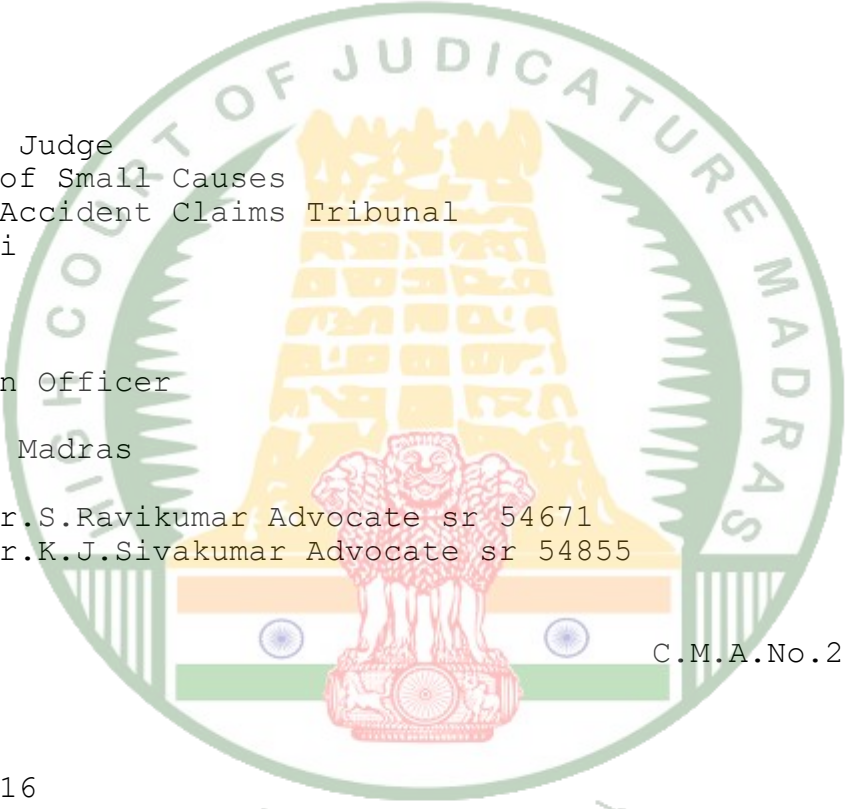
copy to

The Section Officer
VR Section
High Court Madras

+1 cc to Mr.S.Ravikumar Advocate sr 54671
+1 cc to Mr.K.J.Sivakumar Advocate sr 54855

C.M.A.No.2048 of 2016

nm(co)
aa25/10/2016

The seal of the High Court of Madras is a circular emblem. It features a central yellow temple gopuram (tower) with a red lion capital on top. Below the gopuram is a red elephant capital. The entire emblem is set against a background of horizontal stripes in orange, white, and green, with a blue wheel in the center. The words "HIGH COURT OF JUDICATURE MADRAS" are written in a circle around the emblem. Below the emblem, the Sanskrit motto "सत्यमेव जयते" (Satyameva Jayate) is written in Devanagari script.

WEB COPY