

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.09.2016

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THE HONOURABLE MR. JUSTICE T. RAJA

C.M.A. No. 2063 of 2016

and

C.M.P. No. 15084 of 2016

The Managing Director,
Tamil Nadu State Transport
Corporation (Villupuram) Limited,
No.3/137, Salamedu,
Vazhuthareddy,
Villupuram - 605 602. Appellant

Versus

Vasanth @ Killivalavan Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and decree dated 12.11.2013 made in M.C.O.P.No.2912 of 2008 on the file of the Motor Accident Claims Tribunal, II Additional Subordinate Judge, Cuddalore.

For Appellant :Mr.K.J.Sivakumar

JUDGMENT

The Managing Director of the State Transport Corporation, having suffered an award before the Tribunal, directing them to pay a sum of Rs.1,44,600/-, as against the claim of Rs.5,00,000/-, in favour of the claimant, has filed this Civil Miscellaneous Appeal.

2. On 23.04.2008, at about 9.30 a.m., the claimant was travelling in the Bus bearing Registration No.TN32N 2257. When the claimant was about to alight from the front entrance of the bus at Cuddalore Bust Stand, after the bus was stopped, the driver of the bus, without giving any indication, has suddenly started moving the bus, as a result of which the claimant/respondent fell down from the bus and the front wheel ran over on his right foot due to which he sustained grievous injuries. Therefore, the accident took place due to rash and negligent act of the driver of the bus belonging to the Transport Corporation, who did not follow the Traffic Rules and Regulations. The injured was taken to the Government Head Quarters Hospital, Cuddalore, on 23.04.2008, where he was given treatment as an inpatient for one week and then he was given treatment at Private Hospital at Cuddalore as out-patient. In the meanwhile, the petitioner made a complaint that was registered as Cr.No.176 of 2008 by the Station House Officer, Thiruppulliyur, for the offence under Sections 279 and 337 of I.P.C.

3. The Tribunal, after appreciating the oral and documentary evidence, came to the conclusion that the accident had taken place only due to rash and negligent driving of the driver of the bus belonging to the Transport Corporation Bus bearing Reg.No.TN32N 2257 and therefore, it fastened the liability on the Transport Corporation to pay the compensation to the claimant. Hence, the Tribunal has rightly fastened the liability on the State Transport Corporation.

4. Heard the counsel for the appellant and perused the records. With regard to the quantum of compensation, the Tribunal, taking into account the fact that the driver of the bus was not cited as one of the witnesses, has rightly found him guilty of rash and negligent driving of the bus. However, the Tribunal, before fixing the compensation towards the loss of earning capacity, found that there was no document produced by the claimant with regard to his monthly income, although he has claimed that he earned a sum of Rs.200/- per day and fixed a sum of Rs.6,000/- as his notional monthly income. Further, the Tribunal, after fixing the percentage of the disability caused to the petitioner at 10%, came to the conclusion that the loss of earning power of the claimant was at Rs.6,000/- per month. Since the claimant was aged about 23 years at the time of accident, as per the II Schedule of the Motor Vehicles Act, applying the multiplier '18', the Tribunal fixed a sum of Rs.1,29,600/- towards loss of earning power.

5. As a matter of fact, the Tribunal, after analyzing the evidence of P.W.2, who deposed on the X-ray, found the 3rd and 4th Metatarsal bones on the right foot and mal-union of the fractures bones, agreed with the evidence of P.W.2 and fixed the percentage of disability only at 10% as against the claim of the claimant to 30%. Therefore, in my considered opinion, a sum of Rs.1,29,600/- given towards the loss of earning power cannot be found fault with.

6. With regard to the the medical expenses, the Tribunal, on perusing the records produced by the claimant found that the claimant spent a sum of Rs.31,677.80 as per Ex.P7 for the treatment. The Tribunal therefore accepted the said amount, namely, Rs.31,680/- towards medical expenses. In addition to that, Rs.5,000/- has been awarded towards pain and suffering, a sum of Rs.5,000/- towards extra nourishment and Rs.5,000/- towards incidental and transport expenses at the time of accident. Therefore, this Court is unable to find any major infirmity in fixing the total compensation by the Tribunal.

7. Accordingly, the present Civil Miscellaneous Appeal is dismissed confirming the award dated 12.11.2013 passed by the Motor Accident Claims Tribunal (II Additional Subordinate Judge), Cuddalore. The Transport Corporation is hereby directed to deposit the compensation along with interest, less

the amount already deposited, if any, within a period of four months from the date of receipt of a copy of this order. On such deposit being made, the claimant is entitled to withdraw the compensation with accrued interest thereon. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VII)

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Sub Assistant Registrar

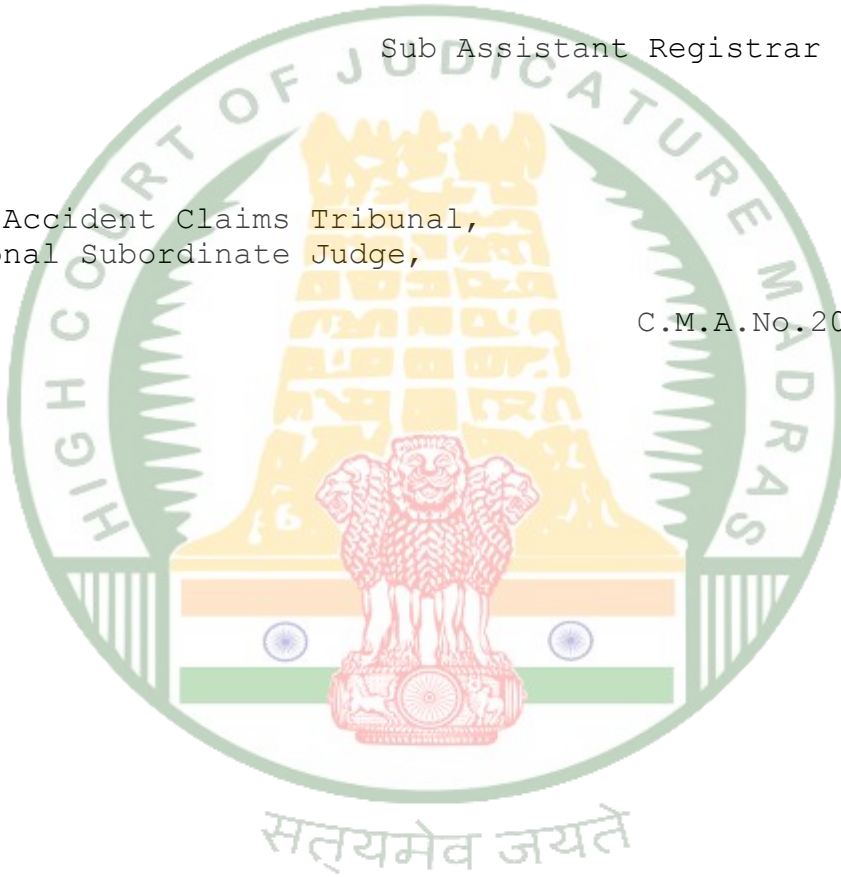
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To

The Motor Accident Claims Tribunal,
II Additional Subordinate Judge,
Cuddalore.

C.M.A.No.2063 of 2016

SSK(CO)
Eu 27.1.17



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