

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 03.10.2016

CORAM

THE HONOURABLE Mr.JUSTICE T.RAJA

C.M.A.No.2105 of 2016
and C.M.P.No.15252 of 2016

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

Vs

Nagamuthu Respondent/Petitioner

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 22.07.2015 made in M.C.O.P.No.182 of 2011 on the file of the Motor Accidents Claims Tribunal, Additional District and Sessions Judge, Ariyalur.

For Appellant : Mr.D.Venkatachalam

J U D G M E N T

The Managing Director of Tamil Nadu State Transport Corporation, Trichy, disagreed with the quantum of compensation fixed by the Motor Accidents Claims Tribunal, Additional District and Sessions Judge, Ariyalur in M.C.O.P.No.182 of 2011 dated 22.07.2015 awarding a sum of Rs.3,61,027/- [Rupees three lakhs sixty one thousand and twenty seven only] along with interest at the rate of 7.5% p.a. from 19.09.2011 to 22.07.2015, has preferred this Civil Miscellaneous Appeal.

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

3. Learned counsel appearing for the appellant-Transport Corporation assailed the approach adopted by the learned Tribunal for fixing Rs.4,500/- as the notional monthly income of the claimant/injured stating that, without there being any basis it has also adopted multiplier method for the alleged multiple injuries sustained by the claimant/injured. On this score, a huge amount of Rs.1,72,000/- [Rupees one lakh seventy two thousand only] has been fixed towards the disability. Again, a sum of Rs.54,000/- [Rupees fifty four thousand only] has been

fixed towards the loss of income for one year on the ground that the claimant/injured was taking treatment and as a result, he was not able to take up his livelihood. Towards pain and sufferings, a sum of Rs.1,00,000/- [Rupees one lakh only] has been wrongly awarded. Therefore, the impugned quantum of compensation awarded is liable to be interfered with, it is pleaded.

4. Arguing further, he would submit that instead of adopting multiplier method, the Tribunal ought to have fixed 40% disability and there upon should have fixed Rs.3,000/- [Rupees three thousand only] per percentage of disability.

5. This Court considering the manner of accident and the status of the injured, who had travelled as one of the passengers, is unable to agree with the contentions made by the appellant-Transport Corporation for admitting the appeal. Firstly, on the fateful day, the claimant/injured, aged about 56 years, who is an agriculturist doing daily coolie work was just travelling as a passenger in a bus belonging to the Tamil Nadu State Transport Corporation bearing registration No.TN 45 N 2756 on 30.07.2011 at about 9.45 a.m., while the bus was driven by its driver from West to East direction on the Keelapalur to Poyyur road, it is an admitted case of both sides that only the driver of the bus dashed against the Tamarind tree near Melakaruppur pirivu road. Therefore, when the accident was rightly proved before the Tribunal that the offending driver of the vehicle only caused the accident, due to his rash and negligent driving, resulting the claimant sustaining multiple injuries, the learned Tribunal accepting sufficient corroboration from the registration of FIR on the file of the Keelapalur Police Station in Crime No.138 of 2011 for offences under Section 279, 337 and 304A IPC and keeping in mind that the vehicle caused the accident belonging to the Transport Corporation, the learned Tribunal has rightly answered the liability against the appellant-Transport Corporation herein. Therefore, when the learned Tribunal has rightly answered, who is negligent in causing the accident and also who is liable for payment of compensation for the tortious act committed by the driver, the only question needs adjudication is whether the Tribunal has rightly granted the compensation to the claimant.

6. It was the claim of the claimant/injured that he had suffered multiple injuries, namely, [1] fracture in his head, [2] fracture in the nose portion, [3] fracture in the hip portion and [4] swelling all over the body, for which when he was taken to Ariyalur Government Hospital, after taking some treatment, he was shifted to Thanjavur Medical College and Hospital for better treatment. The Doctor who was examined as P.W.3, namely, Dr.Kanmani has assessed 44% disability.

Considering the overall multiple injuries sustained by the claimant/injured, again one another Dr.Saravana, has also deposed as P.W.4. From his side, he has assessed 52% disability.

7. To assess the correct disability, both the Doctors P.W.3 and P.W.4 were examined before the Tribunal. In their deposition, both Doctors have consistently given evidence that the claimant/injured was not be able to walk without the help of a walking stick. Therefore, the disability certificates issued by both Doctors marked as Ex.P9 and Ex.P11 were considered and finally the learned Tribunal, instead of accepting 96% disability as recommended by both of them, has assessed only 40% towards the whole body. Therefore, when both Doctors who examined the claimant/injured, after stepping into the witness box have consistently stated that the claimant/injured has lost his capacity to walk without the help of a walking stick, in my considered opinion, in view of 40% disability in walking, the learned Tribunal was right in resorting to the application of multiplier method. Before going to the multiplier method, it has to be seen, whether the learned Tribunal has also rightly fixed the notional monthly income of the injured on the basis of the claim petition. Before the Tribunal, it was pleaded that he was working as coolie and the entire family is depending on his monthly earning. Therefore, as it is well settled proposition that even in the absence of any document to establish the monthly income of the victim, depending upon the facts of the case, a sum of Rs.6,500/- has to be adopted.

8. While so, in the present case, the learned Tribunal has fixed only Rs.4,500/- as notional monthly income in the absence of any evidence to prove the monthly income. However, accepting the case of the claimant/injured that he was not able to do any work for almost one year, the learned Tribunal has fixed Rs.54,000/- [Rupees fifty four thousand only] towards loss of income for one year, namely, $\text{Rs.4,500/-} \times 12 = \text{Rs.54,000/-}$. Therefore, while going to the loss on disability, 40% disability has been taken. Using the notional monthly income of the claimant/injured as Rs.4,500/-, the learned Tribunal has adopted multiplier 8, in stead of multiplier 9. Therefore, this Court is not able to find any merit on the appeal filed by the Transport Corporation to modify any amount fixed towards the pain and suffering also. Therefore, the Civil Miscellaneous Appeal fails and it is dismissed. No costs. Consequently, connected Miscellaneous Petition is also closed.

9. Since the learned counsel for the appellant-Transport Corporation submitted that the appellant had deposited a sum of Rs.25,000/- [Rupees twenty five thousand only] towards statutory deposit, the balance amount along with interest accrued thereon is directed to be deposited within a period of four weeks from

the date of receipt of a copy of this order. On such deposit, it is for the claimant to move a petition before the Tribunal for withdrawing the said amount.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

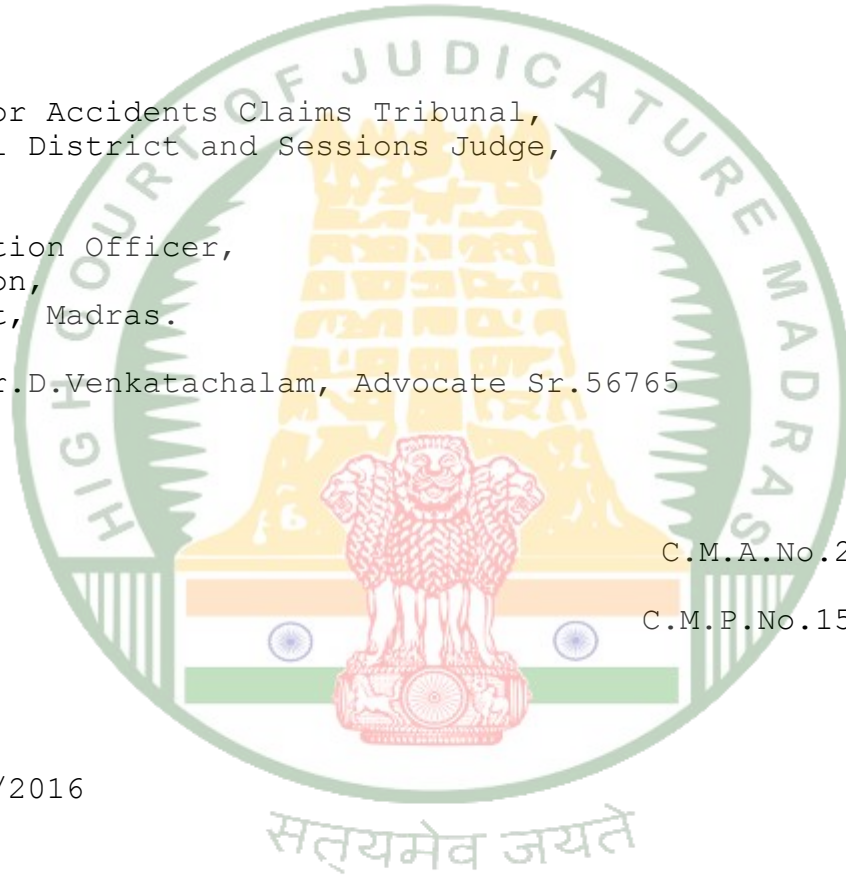
1.The Motor Accidents Claims Tribunal,
Additional District and Sessions Judge,
Ariyalur.

2.The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.D.Venkatachalam, Advocate Sr.56765

C.M.A.No.2105 of 2016
and
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