

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 04.01.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A. No.2836 of 2015
& M.P.No.1 of 2015

The Managing Director,
Tamil Nadu State Transport
Corporation Limited,
Villupuram.

.. Appellant

Versus

S.Thaiyalnayagi

.. Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 10.10.2013 made in M.C.O.P.No.163/2012 on the file of the Motor Accidents Claims Tribunal, (Chief Judicial Magistrate), Cuddalore.

For Appellant : Mr.S.Sairaman

For Respondent : Mr.R.Muralidharan

J U D G M E N T

This Civil Miscellaneous Appeal, by the appellant/Transport Corporation, is directed against the correctness of the impugned award dated 10.10.2013 made in M.C.O.P.No.163/2012 on the file of the Motor Accidents Claims Tribunal, (Chief Judicial Magistrate), Cuddalore, awarding a sum of Rs.11,31,372/- with 7.5% interest per annum as against the claim of Rs.25,00,000/-.

2.According to the claimant, on 16.04.2011, at about 02.00 a.m., when the claimant was travelling as a bonafide traveller in TNSTC bus bearing Registration No.TN-32-N-3245 from Trichy to Villupuram, the driver of the said bus drove the vehicle in a rash and negligent manner and hit against the tree on the left side of the road near Sarada College, Siruvachur. Due to the accident, the claimant sustained the following grievous injuries:

"Above knee amputated (1) (R) Open Type III C comminuted Proximal Tibial - Fibula Fracture. (2) (L) Open Type II Proximal Tibia + Fibula Fracture Articular @ Diaphyseal Extension. (3) (L) Colon Type III A Olecranon Fracture with comminution (4) Laceration (R) Thigh".

3. Learned counsel appearing for the appellant/Transport Corporation, assailing the impugned award passed by the Tribunal, contended before this Court that the Tribunal clearly erred in relying upon Ex.P1/F.I.R., which was marked through the claimant, without examining the author of the F.I.R., forthcoming to the conclusion that the accident had occurred due to the rash and negligent driving made by the driver of the offending vehicle belonging to the Transport Corporation. Adding further, he would submit that when there is no other evidence to prove the registration of F.I.R. as to the manner in which the accident has occurred and to prove the negligence on the part of the bus driver, the finding given in respect of the negligence aspect has to be eschewed. He would further contend that there is no other proper and acceptable evidence in respect of disability and medical evidence, which were produced by the claimant. He would further submit that the amount awarded by the Tribunal is excessive, exorbitant and also without any basis and justification and that therefore the award passed by the Tribunal is not in accordance with law and the same has to be set aside.

4. This Court is not able to find any merits in anyone of the submissions made by the learned counsel for the appellant. The reason is that when the claimant was travelling as a bonafide traveller in the bus belonging to the appellant Transport Corporation, the driver of the said bus, drove the vehicle in a rash and negligent manner and hit against the tree and consequently caused the accident. Immediately, a complaint was lodged before the Perambalur Police Station and a case was registered in Crime No.306/2011 under Sections 279, 337 and 304 (A) IPC alleging that the driver of the bus belonging to the Transport Corporation was solely responsible for the cause of accident. The copy of the F.I.R., which was marked as Ex.P1, corroborates the version of the claimant's case in respect of the negligence that has led to the accident, which ultimately caused grievous injuries to the claimant. The Tribunal has rightly come to the conclusion that the driver of the bus suddenly turned the vehicle towards left side of the mud road and dashed against the Tamarind tree and has caused the accident and as a result the claimant sustained grievous injuries. The Tribunal, considering the fact that the injury being grievous in nature and that the claimant had sustained amputation on the right leg above knee and relying upon 83% of disability given by

PW2/Doctor, has arrived at the 80% disability.

5.It is relevant to mention that the Tribunal, keeping the age of the claimant at 40 years and applying the multiplier '15', has fixed the notional monthly income of the claimant at Rs.3,000/- and arrived at the loss of future earnings at Rs.4,32,000/-. Considering the fact that the claimant is aged 40 years at the time of accident and that she was eking her livelihood as Tailor, this Court is of the opinion that the sum granted viz. Rs.4,32,000/- under the head 'loss of future earnings' cannot be found fault with. In addition thereto, the Tribunal has awarded under the other heads namely a sum of Rs.18,000/- towards loss of income for six months, Rs.40,000/- towards pain and sufferings, Rs.40,000/- towards loss of amenities, Rs.5,53,372/- towards medical expenses, Rs.25,000/- towards future medical expenses, Rs.18,000/- towards attender for 6 months and Rs.5,000/- towards ambulance charges, which are reasonable. Thus, it is seen that the Tribunal has awarded a total compensation of Rs.11,31,372/-, which seems to be reasonable, hence, this Court is inclined to confirm the same. Therefore, this Court finds no infirmity or error in the impugned award passed by the Tribunal. Accordingly, the Civil Miscellaneous Appeal fails and the same is dismissed. No costs. Consequently, Connected miscellaneous petition is closed.

6.Since the learned counsel for the appellant submitted that the appellant has deposited Rs.25,000/- towards statutory deposit, the balance amount is directed to be deposited within a period of six 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 learned Tribunal for withdrawing of the said amount.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

vga

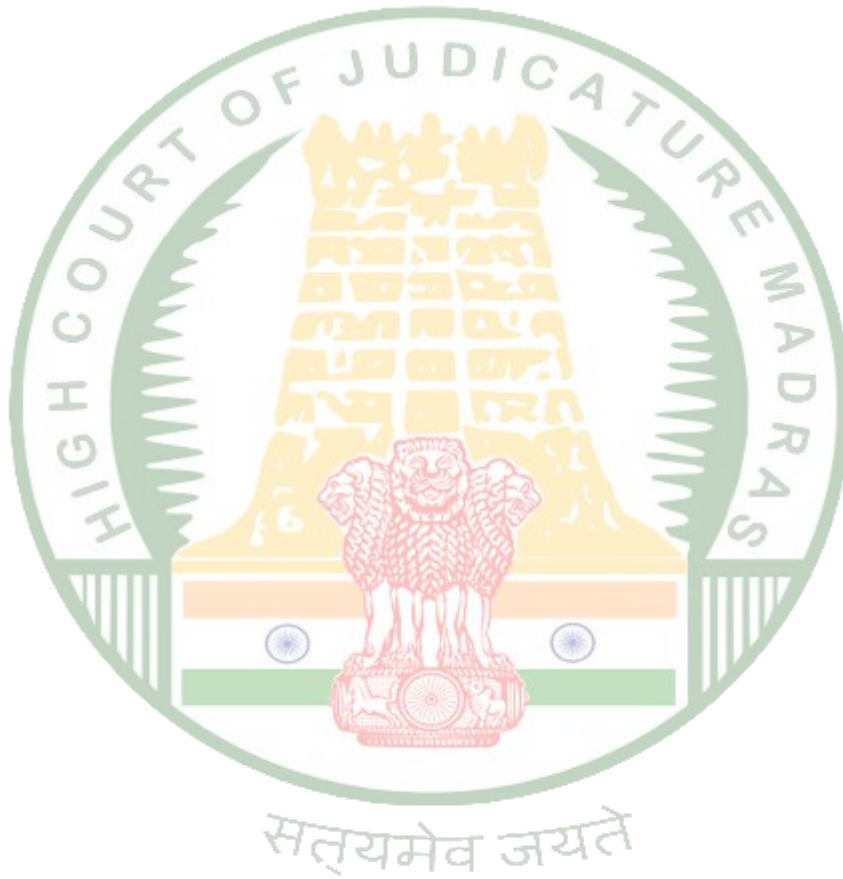
To

1. Motor Accidents Claims Tribunal,
(Chief Judicial Magistrate), Cuddalore.

+1 cc to Mr.S.Sairaman Advocate sr.156
+1 cc to Mr.P.Muralidharan Advocate sr.114

C.M.A. No.2836 of 2015

aa18/05/2016



WEB COPY