

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 08.01.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A. No.6 of 2016

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

Versus

S.Mala ... Respondent/Petitioner.

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988 against the judgment and decree dated 23.01.2015 made in M.C.O.P.No.2020/2009 on the file of the Motor Accidents Claims Tribunal, (IV Judge, Small Causes Court), Chennai.

For Appellant : Mr.K.J.Sivakumar

For respondent : Mr.S.Gangaram Prasad

J U D G M E N T

The Civil Miscellaneous Appeal filed by the appellant/Transport Corporation is directed against the correctness of the impugned award dated 23.01.2015 made in M.C.O.P.No.2020/2009 on the file of the Motor Accidents Claims Tribunal, (IV Judge, Small Causes Court), Chennai, awarding a sum of Rs.4,06,000/- with 7.5% interest per annum as against the claim of Rs.3,00,000/- for the multiple injuries sustained by the claimant.

2.According to the claimant, on 02.11.2008 at about 19.30 hours, while the claimant was travelling as a passenger along with other co-passengers in TNSTC Bus bearing Registration No.TN-32-N-2319, which was proceeding from Tindivanam towards Chennai on G.S.T. Road, Mamandur, Kancheepuram District, the driver of the said bus drove the bus in a rash and negligent manner and turned towards right to enter Siva Gayathri Hotel and in that process dashed against a lorry bearing Registration No.TN-32-1324, which was coming from the opposite direction (Chennai towards Tindivanam). Due to the sudden impact, the claimant sustained grievous injuries and other

co-passengers as well as the lorry driver also sustained injuries. Immediately after the accident, the claimant was admitted in the Government Chinglepet Hospital, Chinglepet and first aid was given to her. Again, she was admitted as in-patient from 03.11.2008 to 07.11.2008 in MIOT Hospital, Manapakkam, Chennai and thereafter took treatment as out-patient.

3. After considering the oral and documentary evidence, the Tribunal held that the accident had occurred only due to the rash and negligent driving of the driver of the bus and awarded a sum of Rs.4,06,000/- as compensation payable to the claimant with interest at the rate of 7.5%. Aggrieved by that award, the appellant-Transport Corporation has filed the present appeal.

4. Heard Mr.K.J.Sivakumar, learned counsel for the appellant and Mr.S.Gangaram Prasad, learned counsel appearing for the respondent and perused the document on record. On the side of the claimant, P.Ws 1 and 2 were examined and documents Exs.P1 to P10 were marked. On the side of appellant/Transport Corporation, R.W.1/driver of the bus was examined and no documents were marked.

5. Learned counsel appearing for the appellant/Transport Corporation, assailing the impugned award passed by the Tribunal, has contended before this Court that when the claim petition was taken up for enquiry, while dealing with the nature of injuries suffered by the claimant, the evidence of P.W.1/claimant was alone made available, which was not even corroborated by any other independent evidence. Learned counsel for the appellant would submit that the Tribunal, on taking note of mere registration of F.I.R. against the driver of the bus, has wrongly come to the conclusion that the claimant has satisfactorily proved the rash and negligent driving of the driver, without even shifting the burden on the claimant. He would further submit that the claimant also has failed to file any valid document to prove her age and income. Therefore, the Tribunal ought not to have fixed Rs.3,000/- towards each percentage of disability, which is on the higher side. Therefore, the entire findings and conclusion reached by the Tribunal in respect of manner of accident is liable to be interfered with.

6. This Court is not able to find any merits in the contentions made by the learned counsel for the appellant. The reason is that after registering the F.I.R., the claimant was admitted in the Government Hospital, Chengalpatu and after taking first aid treatment, she was again admitted in the MIOT Hospital, Manapakkam, Chennai and took treatment as in-patient from 03.11.2008 to 07.11.2008 and thereafter took treatment as out-patient for some time. The Tribunal, after considering the discharge summary, marked as Ex.P2, issued by Government

Hospital, Chengalpattu and one another discharge summary, issued by MIOT Hospital, marked as Ex.P3 and other records namely O.P. Record, marked as Ex.P4, scan report, marked as Ex.P5, medical bills, marked as Ex.P6, x-rays, marked as Ex.P8 and P10 and also the disability certificate, marked as Ex.P9, issued by P.W.2/Doctor certifying that the claimant has suffered 40% partial permanent disability in nature, came to the conclusion that the accident had occurred only due to rash and negligent driving of the driver of the bus, belonging to the appellant/Transport Corporation. The Tribunal, while dealing with the disability of the injured, on the basis of the evidence adduced by P.W.2/Doctor, supported with the disability certificate showing 40% disability, marked as Ex.P9 and scan report marked as Ex.P5, came to the conclusion that the injuries sustained by the claimant are 40% partial and permanent in nature and has determined the award at the rate of Rs.3,000/- for 1% disability and accordingly, has awarded a sum of Rs.1,05,000/- towards injuries. Since the claimant was taking treatment as in-patient from 03.11.2008 to 07.11.2008 in the MIOT Hospital, Manapakkam, Chennai and after discharge, she has proved that she was taking treatment as out-patient, the Tribunal has awarded a sum of Rs.75,000/- towards pain and suffering, considering the long time treatment undergone by the claimant. Similarly, a sum of Rs.50,000/- towards extra nourishment, Rs.30,000/- towards transportation, Rs.25,000/- towards attender charges, Rs.3,000/- towards damages to clothes, awarded by the Tribunal also cannot be found fault with. Considering the fact that the claimant was taking treatment as in-patient from 03.11.2008 to 07.11.2008 and as she being a self employed and earning a sum of Rs.7,500/-, the Tribunal has fixed the notional monthly income of the claimant at Rs.6,500/-, for a period of six months and arrived at a sum of Rs.39,000/- towards loss of income. That is confirmed as it is. Thus, it is seen that the Tribunal has awarded a total compensation of Rs.4,06,000/-, which seems to be reasonable and this Court is inclined to confirm the same.

7. Accordingly, the Civil Miscellaneous Appeal fails and the same is dismissed. No costs. Consequently, Connected miscellaneous petition is closed.

8. 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 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 of the said amount.
vga

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To

1. Motor Accidents Claims Tribunal,
(IV Judge, Small Causes Court), Chennai.

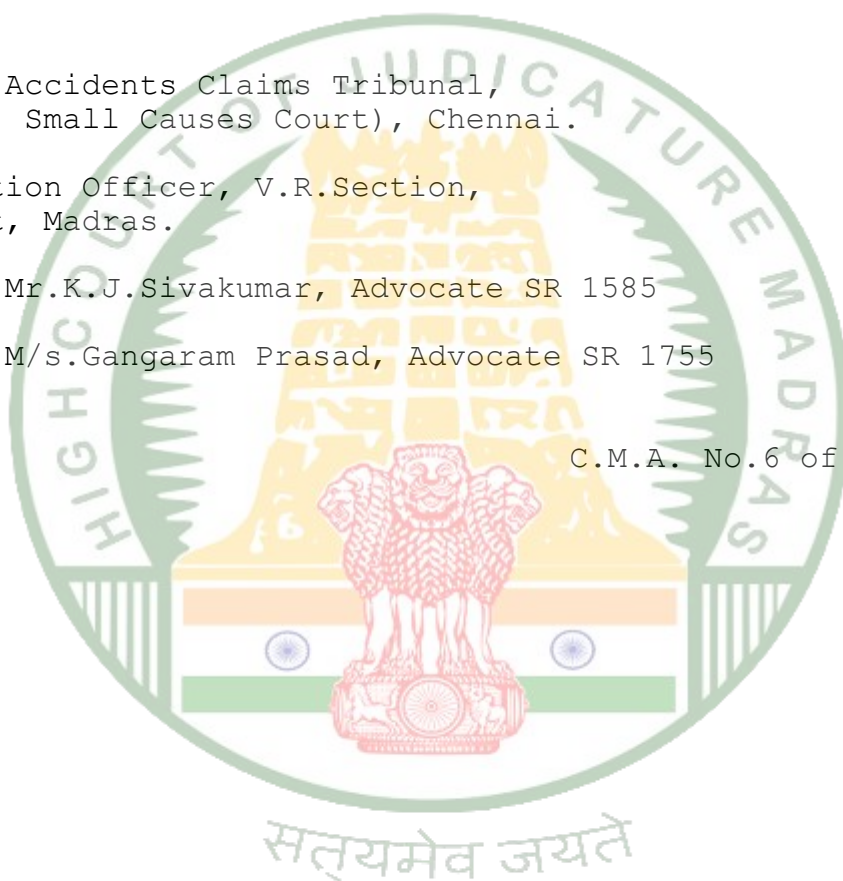
2.The Section Officer, V.R.Section,
High Court, Madras.

+ 1 cc to Mr.K.J.Sivakumar, Advocate SR 1585

+ 1 cc to M/s.Gangaram Prasad, Advocate SR 1755

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