

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 21.01.2016

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THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A. No.90 of 2016
& C.M.P.No.929 of 2016

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

Versus

D.Rajangam ... Respondent/Petitioner

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988 against the judgment and decree dated 20.11.2013 made in M.C.O.P.No.1512/2010 on the file of the Motor Accidents Claims Tribunal, (Special Subordinate Judge), Cuddalore.

For Appellant : Mr.K.J.Sivakumar

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 20.11.2013 made in M.C.O.P.No.1512/2010 on the file of the Motor Accidents Claims Tribunal, (Special Subordinate Judge), Cuddalore, awarding a sum of Rs.2,51,000/- with 7.5% interest per annum, as against the claim of Rs.15,00,000/- for the multiple injuries sustained by the injured/claimant.

2.According to the claimant, on 09.11.2009 at about 05.40 a.m., when he was riding his bicycle from South to North direction on the extreme left side of Chidambaram to Cuddalore Main Road, observing the traffic rules and regulations, a bus bearing Registration No.TN 32 N 1653, belonging to appellant Transport Corporation and coming from Western direction at a high speed in a rash and negligent manner, hit against the bicycle and caused the accident, opposite to K.T.R. Workshop on the Imperial Road at Cuddalore. Due to the accident, the

claimant sustained grievous injuries and multiple fractures all over his body and head. His cycle also got damaged. Immediately, after the accident, he was taken to the Government Hospital, Cuddalore, where first aid was given and then he was referred to the Government Hospital, Pondicherry where he took treatment as an inpatient till 16.11.2009 and still he continues his treatment in Private Hospitals. According to the claimant, the accident was caused due to the rash and negligent driving of the driver of the bus, belonging to the appellant/Transport Corporation.

3.After considering the oral and documentary evidence, the Tribunal held that the accident occurred only due to the rash and negligent driving of the driver of the bus and awarded a sum of Rs.2,51,000/- with 7.5% interest per annum as compensation payable to the claimant. Aggrieved by that award, the appellant-Transport Corporation has filed the present appeal.

4.Heard Mr.K.J.Sivakumar, learned counsel appearing for the appellant and perused the documents on record. On the side of the claimant, P.W.1 to P.W.3 were examined and documents Exs.P1 to P14 were marked. On the side of the appellant/Transport Corporation, R.W.1/driver of the bus was examined and no document was marked.

5.Learned counsel appearing for the appellant/Transport Corporation, assailing the impugned award passed by the Tribunal, contended before this Court that the Tribunal ought not to have assessed the permanent disability of the claimant at 25%, which is on the higher side. He would further submit that the Tribunal only analysing the mere registering 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 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.

6.This Court is not able to find any merit in anyone of the submissions made by the learned counsel for the appellant. The reason is that when the claimant was riding his bicycle on the extreme left side of Chidambaram to Cuddalore Main Road, the driver of the said bus, drove the vehicle in a rash and negligent manner and hit against the claimant and also caused damage to the bicycle of the claimant. Immediately, a complaint was lodged before the Thirupapuliyur Police Station and a case was registered as against the driver of the bus in Crime

No.702/2009 under Sections 279 and 337 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, while taking a turn to Southern direction, caused the accident and as a result of which the claimant had sustained grievous injuries. The Tribunal, considering the fact that the claimant was aged 32 years at the time of accident and that he was earning a sum of Rs.3,000/- per month plus Rs.50/- per day as batta as an Advocate Clerk and also considering the fact that the injury being grievous in nature and that the claimant had undergone treatment immediately after the accident, which was supported by Ex.P4/copy of accident register, issued by the Government Hospital, Cuddalore and that the claimant sustained grievous injuries in the lower lip, maxilla right shoulder and right wrist apart from having contusion in the brain, which were supported by Ex.P5/Follow up card issued by Government General Hospital, Pondicherry, Ex.P11/Opinion certificate issued by Dr.Velumani, Ex.P12/xerox copy of disability certificate issued by Dr.Chandran, Ortho and Ex.P14/xerox copy of disability certificate issued by Dr.Senthilkumar, Ortho, who examined the claimant and deposed that there is mal union of the fractured right clavicle and right radius and the movement of the right shoulder and right wrist is restricted with pain and that the percentage of partial permanent disability caused to the claimant is 45%, has correctly arrived at a sum of Rs.2,16,000/- towards loss of income, by applying the multiplier '16', as per the II Schedule of the Motor Vehicles Act and arriving at 25% towards partial permanent disability and fixing the monthly income of the claimant at Rs.4,500/- ($4500 \times 12 \times 16 \times 25 / 100$), which cannot be found fault with. Similarly a sum of Rs.20,000/- towards pain and sufferings, Rs.5,000/- towards transport expenses, Rs.5,000/- towards other incidental expenses and Rs.5,000/- towards medical expenses arrived at by the Tribunal cannot be found fault with, as the same are considered to be meagre amount. Thus, it is seen that the Tribunal has awarded a total compensation of Rs.2,51,000/-, which seems to be reasonable and 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 CMP. is closed.

7.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 the said amount.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

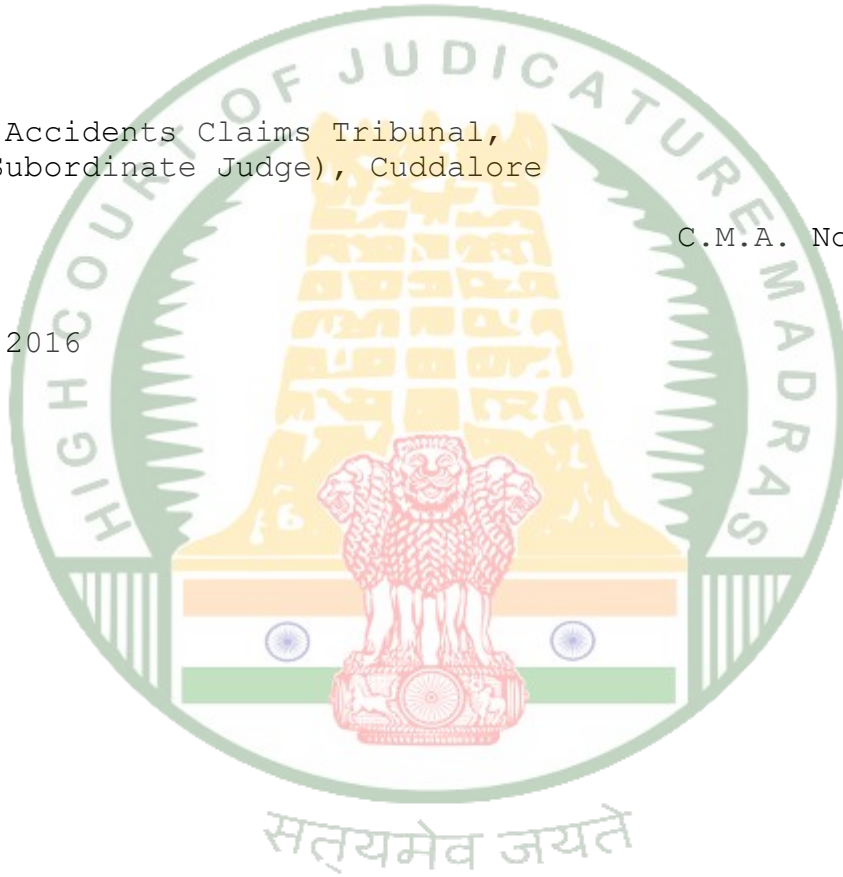
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To

1. Motor Accidents Claims Tribunal,
(Special Subordinate Judge), Cuddalore

C.M.A. No.90 of 2016

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