

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.04.2016

CORAM:

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

C.M.A.No.953 of 2016

&

C.M.P.No.7338 of 2016

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

Vs.

R.Nandhini Respondent/Petitioner

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the order and decretal order dated 22.01.2014 made in M.C.O.P.No.370 of 2009 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate) at Cuddalore.

For Appellant : Mr.K.J.Sivakumar

J U D G M E N T

The Transport Corporation has come up with this appeal challenging the quantum of compensation awarded by the Tribunal.

2. On 24.12.2008, when the the respondent/claimant boarded the appellant's bus bearing Reg.No.TN-32-N-1431 to go to Sethiathope Hospital, on finding that her mother was not available in the bus, she made a request to the conductor to stop the bus and when the bus was stopped, near Rice Mill situated near Pari Middle School, Veeramudayanatham, she was getting down, the driver of the bus moved it suddenly in a rash and negligent manner, due to which, the claimant lost her control and fell down. Claiming compensation, the claimant had approached the Tribunal seeking a sum of Rs. 10,00,000/- as compensation.

3. After analyzing the available oral and documentary evidence, the Tribunal awarded a sum of Rs.1,84,850/- as compensation, under the following heads:

https://hcservices.ecourts.gov.in/hcservices/	Heads	Amount
	Disability at 20%	Rs. 20,000.00
	Pain and sufferings	Rs. 30,000.00

Heads	Amount
Loss of amenities	Rs. 20,000.00
Loss of future prospects	Rs. 30,000.00
Deformity	Rs. 25,000.00
Attender Charges	Rs. 9,000.00
Medical Expenses	Rs. 20,850.00
Nutritious food	Rs. 5,000.00
Ambulance	Rs. 5,000.00
Total	Rs.1,84,850.00

4. Learned counsel appearing for the appellant/Transport Corporation would mainly contend that the quantum of compensation awarded by the Tribunal is too high. He would further contend that the Tribunal failed to accept the evidence of RW1 and also the final report filed by the police and the FIR was closed as mistake of fact. Further learned counsel for the appellant would submit that the Tribunal ought not to have awarded a sum of Rs.30,000/- towards loss of future prospects, which is on the higher side. Hence, he prays for reduction of the compensation awarded by the Tribunal.

5. On the other hand, learned counsel appearing for the respondent/claimant would submit that the respondent/claimant is aged about 19 years at the time of accident. A glance of the order would reveal that the respondent/claimant was admitted in the Government Hospital, Chidambaram and thereafter, admitted in Rajah Muthiah Dental College and Hospital, Chidambaram and treated in a private hospital and she has suffered the following injuries:

1. Fracture Mandible (Right side jaw)
2. Fracture of 4 teeth & mobility
3. Left side jaw-9 sutures done
4. Multiple facial abrasions
5. Abrasion below lips
6. Abrasion below neck
7. Abrasion on left wrist
8. Abrasion on right hand
9. Multiple grievous injuries all over the body

Taking note of the injuries sustained by the claimant, the Tribunal has awarded the compensation at Rs.1,84,850/- together with interest at 7.5% p.a.

6. It is contended by the learned counsel for the appellant that the FIR filed against the driver was closed as mistake of fact, for which, no proof has been furnished by the appellant and that the appellant has to establish that there was no negligence on the part of the driver of the bus. The Tribunal, as per the oral and documentary evidence filed by

the Appellant held that the FIR is closed as mistake of fact and even assuming that the FIR is closed as mistake of fact, it will not affect the proceedings of the Tribunal, as per the Division Bench of this Court in the MANAGING DIRECTOR, TAMIL NADU STATE TRANSPORT CORPORATION V. S. YOBU & ANOTHER reported in CDJ 2013 MHC 2847 whereby and whereby reads as follows:

"After investigation, the police referred his F.I.R. as 'Mistake of Fact. It is the conclusion/decision of the police. It cannot be substituted for the decision of the Tribunal. The Tribunal has to decide the question of negligence independently based on the evidence adduced before it. In doing so, it cannot try it like a complicated civil suit by a Civil Court or a criminal case in a Sessions Court. It must assess the evidence applying basic standards of proof. But, it need not follow the technical rules of evidence embodied in the Evidence Act."

7. Hence, the compensation granted by the Tribunal, more particularly taking note of the accident and disability certificate is very low and the Tribunal has rightly observed that the accident had occurred only due to the rash and negligent driving of the bus driver and the appellant is vicariously liable to pay compensation. Hence, the award of the Tribunal under all heads is hereby confirmed.

8. In fine, the Civil Miscellaneous Appeal is dismissed, confirming the quantum of compensation and the rate of interest at 7.5% per annum awarded by the Tribunal. It is made clear that if no amount is deposited so far, the appellant/Transport Corporation is directed to deposit the entire award amount together with accrued interest to the credit of M.C.O.P.No.370 of 2009 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Cuddalore, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the Tribunal shall pay compensation to the claimants in the form of a crossed Account Payee Cheque, favouring only the claimants and it should not be issued in favour of any other person/Company. No costs. Consequently, connected C.M.P.No.7338 of 2016 is also closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

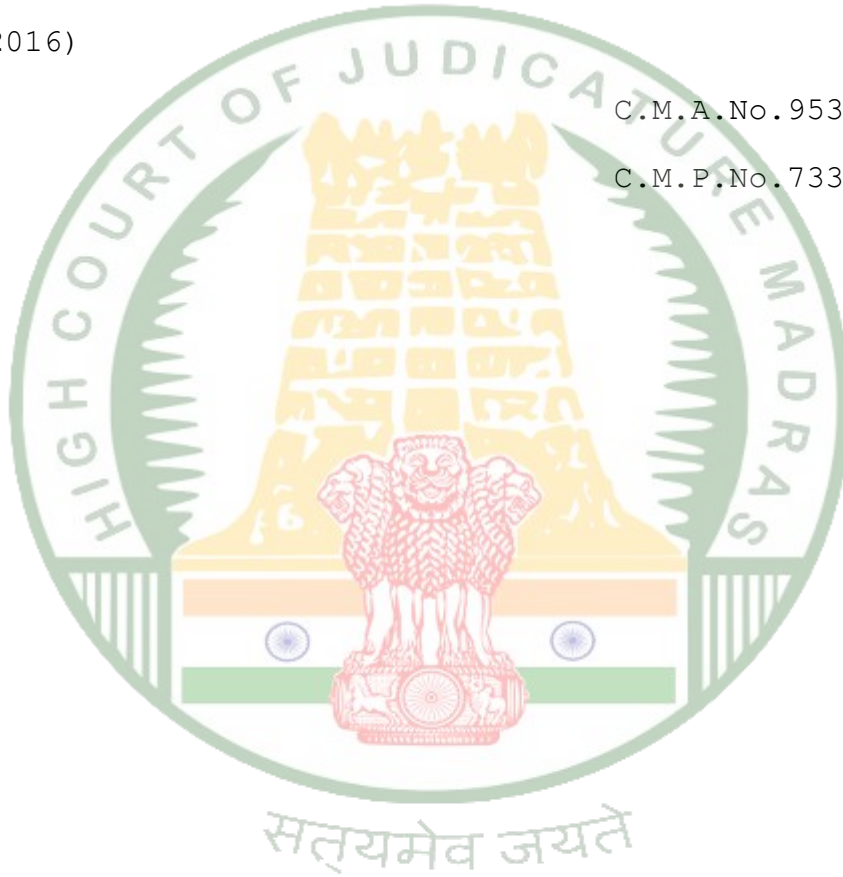
To :

The Chief Judicial Magistrate,
(Motor Accident Claims Tribunal)
Cuddalore.

+1cc to Mr.K. J. Sivakumar, Advocate, S.R.No.25697

SKS (CO)
EU (11/07/2016)

C.M.A.No.953 of 2016
&
C.M.P.No.7338 of 2016



WEB COPY