

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.04.2016

CORAM:

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

C.M.A.No.992 of 2016

&

C.M.P.No.7572 of 2016

The Managing Director,
Tamil Nadu State Transport Corporation,
Salem Division II Ltd.,
Dharmapuri. ... Appellant/Respondent

Vs.

Chennammal ... Respondent/Petitioner

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the order and decretal order dated 31.01.2011 made in M.C.O.P.No.366 of 2008 on the file of the Motor Accident Claims Tribunal (Sub Court) at Dharmapuri.

For Appellant : Mr.D.Venkatachalam
For Respondent : Mr.M.Selvam

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 25.03.2005 at about 9.00 a.m, when the respondent/claimant was walking from Harur bus stand to Taluk Office which is situated in Harur-Dharmapuri Main Road, near TNT Theatre, the driver of the appellant's bus bearing Reg.No.TN-29-N-1526 driven in a rash and negligent manner, dashed against the respondent/claimant, due to which, she sustained injuries all over the body. Immediately, she was admitted at Government Hospital, Harur and thereafter, referred to Government Hospital, Dharmapuri. Claiming a sum of Rs.5,00,000/- as compensation, the claimant had approached the Tribunal.

3. After analyzing the available oral and documentary evidence, the Tribunal awarded a sum of Rs.90,0000/- as compensation, under the following heads:

Heads	Amount
Disability at 35%	Rs. 70,000.00
Pain and sufferings	Rs. 15,000.00
Extra Nourishment	Rs. 5,000.00
Total	Rs. 90,000.00

4. Learned counsel appearing for the appellant/Transport Corporation would mainly contend that the FIR lodged against the appellant/Transport Corporation bus and its driver was closed as mistake of fact. Further, learned counsel for the appellant would submit that the alleged accident has not occurred on 25.03.2005, though the appellant's bus plied in different routes and there is no possibility to say that the accident occurred due to the appellant's bus. Therefore, she is not eligible to get any compensation and that the award has to be set aside.

5. On the other hand, learned counsel appearing for the respondent/claimant would submit that the respondent/claimant is aged about 46 years at the time of accident. A glance of the order would reveal that the respondent/claimant was admitted in Government Hospital, Hosur and thereafter referred to Government Hospital, Dharmapuri for further treatment as inpatient from 26.03.2005 to 05.04.2005. As evident from the evidence of PW2-Dr.Krishnakumar, the respondent/claimant sustained fracture in her right hand and right wrist and injuries over right wrist and hip and chest. Taking note of the injuries sustained by the claimant, the Tribunal has awarded compensation at Rs.90,000/- 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 case reported in CDJ 2013 MHC 2847, relevant portion of which 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 award of 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 are 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.366 of 2008 on the file of the Motor Accidents Claims Tribunal, Sub Court, Dharmapuri, 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 claimant in the form of a crossed Account Payee Cheque, favouring only the respondent/claimant 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 V)

//True Copy//

Sub Assistant Registrar

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To

The Sub Judge,
Motor Accident Claims Tribunal,
Dharmapuri.

+1cc to Mr.D.Venkatachalam, Advocate sr.26021

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srg 09/08/2016