

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 07.06.2016

CORAM

THE HONOURABLE MR.JUSTICE T. MATHIVANAN

C.M.A.No.778 of 2011

and

M.P.No.1 of 2011

Metropolitan Transport Corporation Ltd.,  
Rep. by its Managing Director,  
No.2, Pallavan Salai,  
Chennai-600002.

...Appellant/Respondent

Versus

Murali

... Respondent/Petitioner

Prayer: Civil Miscellanies Appeal has been filed under Section 173 of the Motor Vehicles Act 1988, against the fair and decreetal order dated 17.11.2009 passed in M.C.O.P.No.35 of 2008 on the file of the Motor Accident Claims Tribunal (Additional Sub Judge), Thiruvannamalai.

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For Appellant : Mr.S.S.Swaminathan  
For Respondent : Mr.B.Jawahar

JUDGMENT

Questioning the negligence and quantum, the appellant/Transport Corporation Ltd., who is the respondent in the claim petition stands before this Court with this Civil Miscellaneous Appeal.

2. The respondent had made a claim before the Claims Tribunal (Additional Sub Judge), Thiruvannamalai, claiming a sum of Rs.5,00,000/- for the injuries sustained by him in a road traffic accident, said to have been taken place on 20.06.2007 @ 2.30. p.m. at Valluar Kottam Bus Stop, Chennai involving a passenger bus bearing Registration No.TN-01-N-4348 belonging to the appellant/Transport Corporation Ltd.,.

3. As it is manifested from the claim petition, the respondent/claimant was travelling in the above said bus on 20.06.2007. When the bus was nearing Valluvar Kottam Bus stop, he was informed by the conductor that the bus would not go to Vadapalani and the conductor had given a signal by whistle to stop the bus. Before the respondent could alight from the bus completely, the driver, who was on the steering wheel had moved the bus without minding the respondent getting down from the bus. As a result of

which, he had fallen down and his right leg was run over by the rear wheel of the bus. On account of this reason, the right leg of the respondent was completely severed. Pelvic bone was fractured. Besides this, he had sustained injuries over his right knee, left foot and above his body.

4. The appellant/Transport Corporation Ltd., had contested the claim by filing their counter statement, wherein, they had contended that the accident was taken place only due to the negligence and carelessness of the respondent, as he was trying to get down from the moving bus.

5. It is significant to note here that the respondent/claimant's right leg was amputated below the knee level and therefore, his disability was assessed as per Ex.P4 by PW.2 @ 70%.

6. On appreciation of the evidences, both oral and documentary, the Tribunal had proceeded to award a sum of Rs.4,54,200/- under the following heads:

|                                                     |               |
|-----------------------------------------------------|---------------|
| (i) Loss of earning capacity<br>(3000x12x16x70/100) | Rs.4,03,200/- |
| (ii) Transport Expenses                             | Rs. 2,000/-   |
| (iii) Extra Nourishment                             | Rs. 2,000/-   |
| (iv) Attended Charges                               | Rs. 2,000/-   |
| (v) Mental agony and loss of happiness              | Rs. 25,000/-  |
| (vi) Pain and Suffering                             | Rs. 20,000/-  |
| Total                                               | Rs.4,54,200/- |

The appellant/Transport Corporation Ltd., was directed to pay the aforesaid amount to the respondent/claimant with interest @ 7.5%.

7. Mr.S.S.Swaminathan, learned counsel appearing for the appellant/Transport Corporation Ltd., while advancing his arguments has pointed out that the injured/respondent had contributed his negligence considerably to the accident and the ratio of his negligence could be fixed 25% and therefore, he has submitted that since the respondent, at the age of 19 years was travelling by standing on the foot Board and since he had lost the holding he had voluntarily fallen down and invited accident for which the driver of the bus could not be brazened with the negligence. But, in support of his argument, no satisfactory evidence was forthcoming on behalf of the respondent.

8. It is obvious to note here that the driver, who was on the steering wheel of the bus at the relevant point of time was examined as RW1, but no other evidence is available to support his oral evidence as well as to disprove the claim of the claimant. The respondent had produced Ex.P1, the First Information Report, Ex.P2, Motor Vehicle Inspector's report. All would go to show that the driver of the bus (RW1) was at fault, while driving the bus. Further, the respondent/claimant was aged about 19 years at the time

of accident. He has categorically stated in his evidence that when he was travelling in the bus, he was informed by the conductor that the bus was not going to Vadapalani and therefore, the conductor had given a signal by whistle to stop the bus and before he could get down from the bus completely, the driver had moved the bus without minding the respondent/claimant and on account of this reason, he had fallen down and his right leg was run over by rear wheel of the bus.

9. Keeping in view of the above fact and based on the evidences available on record, this Court finds that the arguments advanced by Mr.S.S.Swaminathan, learned counsel appearing for the appellant/Transport Corporation Ltd., is not discernible and it cannot be heard to say that the respondent had also rendered his negligence at least to the extent of 25% to the accident.

10. Therefore, this Court finds that the finding of the Tribunal is found perfect and does not require any modification. Since the question of contributory negligence does not arise, there is no need to alter or modify the award passed by the Tribunal. The respondent/claimant had claimed that he was working as an Electrician and getting a sum of Rs.6500/- per mensem at the time of occurrence. Since there was no supportive evidence, the Tribunal had determined his monthly income @ Rs.3000/- only, and proceeded to adopt the multiplier system, after selecting the multiplier at 17 and determined the loss of earning capacity to the extent of 70% @ Rs.4,03,200/-.

11. Therefore, the award passed by the Tribunal to the extent of Rs.4,54,200/-, as afore stated, is proportionable to the disability suffered by the respondent and hence the award of the Tribunal does not require any modification.

12. In the result, the Civil Miscellaneous Appeal is dismissed. The Award passed by the Tribunal is confirmed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Asst.Registrar (CS III )

/true copy/

Sub Asst. Registrar

To

1.The Additional Sub Judge,  
Motor Accident Claims Tribunal,  
Thiruvannamalai.

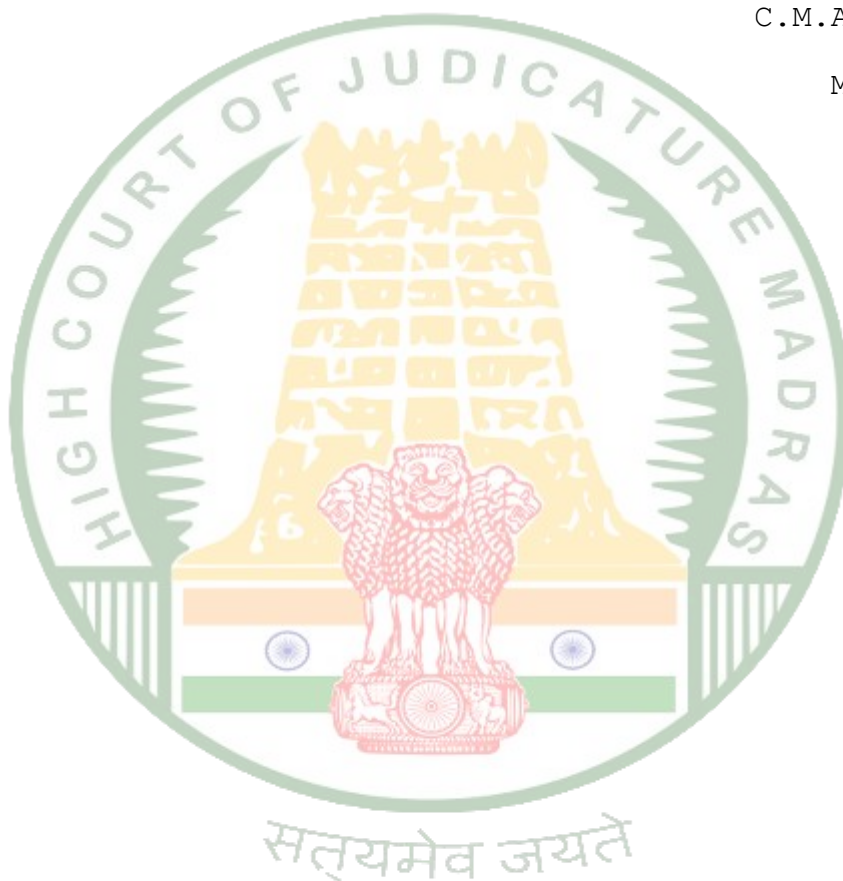
2.The Section Officer,  
V.R.Section, High Court,  
Madras.

+1 cc to Mr.S.S.Swaminathan, Advocate,SR.30358

+1 cc to Mr.B.Jawahar, Advocate,SR.30582.

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