

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2016

CORAM

THE HONOURABLE MR. JUSTICE T.RAJA

C.M.A.NO.435 OF 2010
AND M.P.NO.1 OF 2015

Deivasigamani

.. Appellant/Claimant

Vs.

The Managing Director,
Tamil Nadu State Transport Corporation,
(Coimbatore) Ltd., Chennimalai Road,
Erode Taluk, Erode District.

.. Respondent/Respondent

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act against the award and Decree made in M.C.O.P.No.36 of 2008 dated 06.04.2009 on the file of the Motor Accident Claims Tribunal-cum-Principal Sub Court, Erode.

For Appellant : Mr.A.K.Kumarasamy

For Respondent : Mr.S.V.Vasanthakumar

JUDGMENT

This appeal is filed by the claimant challenging the correctness of the impugned Award passed by the learned Motor Accident Claims Tribunal-cum-Principal Sub Court, Erode, dated 06.04.2009 made in MCOP No.36 of 2008 awarding a sum of Rs.40,006/-, as against the claim of Rs.2,00,000/- for the grievous injuries with fracture sustained by him in his right shoulder and right hand.

2. When the appellant/claimant was travelling as one of the passengers in the bus bearing registration No.TN 33 N 1961, driven by the Driver of the respondent Transport Corporation on 16.08.2007 at about 9.55 a.m., the bus was driven with high speed towards West on the Uthukuli Railway Station to

Tirupppur Road near Sampalathottam and thereby dashed on the southern side of the Ponnusamy Gounder's compound wall and also on a coconut tree. Due to the accident, several passengers travelled in the bus sustained injuries. The appellant, who also sustained grievous injuries with fracture on his right shoulder and right hand, was brought to the Government Hospital, Tiruppur, for treatment after First-aid. He was admitted at TMF Hospital, Tiruppur, wherein, he took treatment only as in-patient from 16.08.2007 to 18.08.2007 till he was discharged.

3. The learned counsel for the appellant would submit that the Tribunal, without considering the age of the claimant, namely, 63 years at the time of accident and the grievous injuries with fracture sustained by him in his right shoulder and right hand, thereby losing the power of earning capacity as the master-weaver due to injuries sustained, has wrongly rejected the Medical Bills, Ex.P.9, on flimsy grounds and without assigning any valid and acceptable reasons. He would submit that when he was not able to continue his works, the Tribunal has wrongly rejected the prayer for suitable compensation solely on the basis of the Disability Certificate given by the Doctor, S.M.Duraisamy, who deposed as P.W.2, supporting the claim of the claimant/appellant. When the said Doctor issued the Disability certificate, Ex.P.13, inadvertently, he has wrongly mentioned that the claimant/appellant has suffered injuries with fracture on his left shoulder and left hand, instead of right shoulder and right hand. He would also submit that when there is such inconsistent stand taken by the claimant/appellant before the Tribunal, the Tribunal, ought to have clarified as to whether the claimant / appellant suffered injuries with fracture on his right shoulder or left shoulder, but without asking any such clarification, solely relying on the Disability Certificate, which was marked as Ex.P.13 showing that the claimant appellant has suffered grievous injuries with fracture on his left shoulder and left hand, wrongly came to the conclusion that the claimant / appellant has made a false case.

4. Adding further, he would submit that when it is an admitted case that after sustaining grievous injuries on right shoulder and right hand, the claimant was brought to the Government Hospital, Tiruppur and after getting first-aid, he was again admitted at TMF Hospital, Tiruppur, and took treatment for a period of three days from 16.08.2007 to 18.08.2007 as in-patient, the Tribunal, considering the said fact that he took treatment as in-patient and the age of the appellant, namely, 63 years, on the date of accident, ought to have awarded sufficient compensation, but ironically, without even awarding the suitable compensation, a sum of Rs.40,006/- has alone been fixed as

compensation, which is wholly erroneous and unjustified.

5. He would further submit that when the Discharge Summary issued by the hospital has been marked as Ex.P.8 and the Wound Certificate issued by the TMF Hospital, Tiruppur, was also marked as Ex.P.5 showing that he was taking treatment as inpatient from 16.08.2007 to 18.08.2007 for the grievous injuries suffered on his right shoulder and right hand with fracture, sufficient compensation should have been granted. Adding further, he would submit that When the claimant / appellant produced medical bills for Rs.17,598/-, without even any reason, only a sum of Rs.40,006/- has been awarded against the claim of Rs.2,00,000/- and hence, the appellant is entitled to more compensation.

6. This Court is not able to find any strong reason to differ from the findings and the conclusion reached by the Tribunal. The reason is when the appellant said to have suffered grievous injuries with fracture in his right shoulder and right hand, it is not known why the Doctor S.M.Duraisamy, who deposed as P.W.2 in support of the claimant, has issued Disability Certificate that has been marked as Ex.P.13, showing that the claimant/appellant suffered grievous injuries with fracture in his left shoulder and left hand. When the evidence of the Doctor and the Wound Certificate are crucial evidence, which will tilt the balance of the case of the claimant/appellant, the Tribunal, considering the Disability Certificate issued by the Doctor S.M.Duraisamy, who deposed as P.W.2, has come to the conclusion that the case of the claimant/appellant has not been consistently established. The reason is that when the claimant/appellant came to the Court with the claim petition, he stated that he sustained grievous injuries with fracture in his right shoulder and right hand. But the Disability Certificate issued by the Doctor shows that the claimant/appellant sustained grievous injuries with fracture in his left shoulder and left hand. Therefore, this court is not able to find any infirmity in the above findings of the Tribunal.

7. At this juncture, learned counsel for the claimant/appellant submitted that it was an inadvertent clerical mistake committed by the Doctor while issuing the disability certificate, Ex.P.13. This Court is not able to accept the said submission for the simple reason that once the evidence of the Doctor, P.W.2 - S.M.Duraisamy and the Disability Certificate, Ex.P.13 are excluded from consideration, nothing remains in favour of the claimant / appellant to substantiate his claim.

8. For the aforesaid reasons, this appeal fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-III)

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Sub Assistant Registrar

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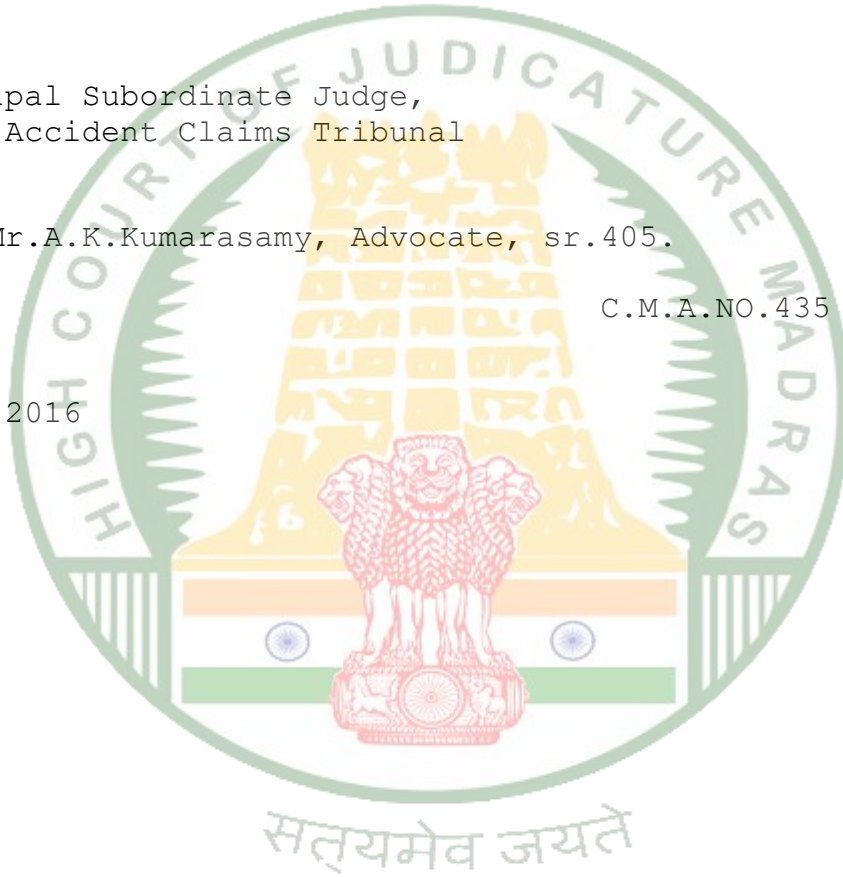
To

The Principal Subordinate Judge,
The Motor Accident Claims Tribunal
Erode.

+1 cc to Mr.A.K.Kumarasamy, Advocate, sr.405.

C.M.A.NO.435 OF 2010

bvr co
kra 27.04.2016



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