

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.06.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.No.1420 of 2017
and CMP.No.7552 of 2017

The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
37, Mettupalayam Road,
Coimbatore at Erode 638001 Respondent/Appellant

vs.

D.Manimegali Petitioner/Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Order and Decreetal Order in MCOP No.33 of 2013 dated 28.04.2015 on the file of Motor Accidents Claims Tribunal, [Sub Court], Aathur.

For Appellant : Mr.R.T.Sundari
For Respondent : Mrs.Ramya V. Rao

J U D G M E N T

[Order of the Court was made by M.GOVINDARAJ, J.]

Challenging the compensation ordered by the Motor Accidents Claims Tribunal (Sub Judge) Aathur, in MCOP No.33 of 2013 dated 28.04.2015, the Tamilnadu State Transport Corporation Limited, Coimbatore, Erode, has preferred the above appeal.

2. On 11.03.2013 at about 11.15am, the injured/claimant was driving her two wheeler bearing Regn.No.TN77B6939 from her residence to School viz., Saratha Matric School, Narasingapuram, following rules. At that time, the driver of the bus belonging to appellant Corporation bearing Regn.No.TN33N2812, drove it in a rash and negligent manner and hit the respondent/claimant from back side. Out of which, the claimant had suffered grievous injuries.

3. The tribunal based on Ex.P1-FIR in Cr.No.236 of 2013 on the file of Aathur Police Station, Ex.P5-Motor Vehicle Inspector's report for the Transport Corporation bus bearing Regn.No.TN33N2812, Ex.P7-charge sheet and evidence of PWs.1 and 2, has clearly found that the negligence was on the part of the driver of the bus belonging to the transport corporation.

4. The appellant Transport Corporation though raised the issue of negligence, has pressed its challenge only against the quantum awarded by the tribunal.

5. Insofar as compensation awarded to the injured, the transport corporation would contend that it is excessive on all heads.

6. The tribunal has awarded compensation as hereunder:

Loss of Income	: Rs.	5,660/-
Transportation	: Rs.	43,350/-
Nutrition	: Rs.	10,000/-
Damages to articles	: Rs.	5,000/-
Medical Expenses	: Rs.	2,29,000/-
Attendant charges	: Rs.	20,000/-
Loss of amenities	: Rs.	2,00,000/-
Pain and Suffering	: Rs.	2,50,000/-
Permanent disability	: Rs.	3,00,000/-
Loss of earning capacity	: Rs.	17,34,000/-
Total	: Rs.	27,97,010/-

7. Injured was working as a teacher in Sri Saradha Memorial Matriculation Hr. Sec. School, Attur, Salem District. She is a Post Graduate and also holding a degree in Bachelor of Education. She was working as the Zoology teacher from 21.10.2010 till the date of accident.

8. From the perusal of Ex.P2-Wound certificate, Ex.P3-Discharge summary issued by Ganga Hospital, Coimbatore, Ex.P12-X-ray of spinal cord and Ex.P22-disability certificate, we could see that the injured has suffered serious injuries in her spinal cord. She was fixed with eight screws in the spinal cord to stabilize. She had undergone medical treatment for compression fracture, involving anterior and middle columns of spinal cord and from the periodic review, it could be seen that she was bedridden. It was opined that physiotherapy treatment and exercise would improve her partial sitting position and slowly she could walk with the use of Caliper Elbow crutch walking, etc. From the discharge summary and hospital records, we could see that the injured is not in a position to resume her avocation.

9. When the matter was taken up for final hearing, in order to ascertain the loss of earning capacity, we directed the counsel for respondent/injured to produce the records pertaining to her continuance in the job. On the directions of this Court, the learned counsel for the respondent produced the certificate from the educational institution from where she was employed stating that she was precluded from attending school due to injuries and somebody else has been appointed in her place. The attendance register for the past five years also shows that

the injured was not employed in the said school. The learned counsel for the respondent would further affirm that the injured is not employed anywhere, after the accident.

10. On the basis of the records and the submissions made, we could ascertain that there is loss of earning capacity due to the accident, caused by the driver of the transport corporation bus.

11. As stated supra, the tribunal has awarded a sum of Rs.17,34,000/- as disability compensation, on the basis of the monthly income at the rate of Rs.8,500/- for permanent injury suffered by the injured. The injured was aged about 26 years at the time of accident. Therefore, by applying multiplier '17', the tribunal has rightly calculated the loss of earning at $\text{Rs.8,500/-} \times 12 \times 17 = \text{Rs.17,34,000/-}$.

12. On the basis of Ex.P8- series of Medical Bills (69 Nos.) and Ex.P10-series of Physiotherapy bills (5 Nos.), a sum of Rs.2,29,000/- was awarded towards medical expenses. For extra nourishment, Rs.10,000/- was awarded. The injured had met with the accident at the prime age of 26 years. She has to live with the ailments and cannot act as a normal person. She has lost the luxuries of life. Further more, she has to live with the lamentation and discomfort throughout her life. Considering the plight of the injured, the award of the tribunal for loss of amenities, a sum of Rs.2,00,000/- and a sum of Rs.2,50,000/- for pain and suffering are very much reasonable and just. Towards permanent disability, a sum of Rs.3,00,000/-, is awarded as the injured cannot pursue her avocation as teacher. She cannot even sit for a longer time. Therefore, the functional disability assessed as 100%, by the tribunal is correct and award of Rs.3,00,000/- ($\text{Rs.3,000/-} \times 100$) is reasonable and does not warrant any interference.

13. We do not find any discrepancy in the award passed by the tribunal. The compensation awarded is just and does not require any interference. Therefore, the appeal preferred by the transport corporation merits no consideration and in the result it is dismissed. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

14. Appellant-Transport corporation, has already deposited the award amount with proportionate interest and costs to the credit of MCOP No.33 of 2013 on the file of Motor Accidents Claims Tribunal, [Sub Court], Aathur. Therefore, respondent/claimant is entitled to withdraw the same on filing appropriate application before the tribunal.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

The Motor Accident Claims Tribunal,
[Sub Court], Aathur.

+1 cc to M/s.Ramya V.Rao Advocate sr 40680/17

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and CMP.No.7552 of 2017

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