

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2017

CORAM:

THE HONOURABLE Dr.JUSTICE S.VIMALA

C.M.A.No.2330 of 2016
and C.M.P.No.16337 of 2016

The Managing Director,
Tamil Nadu State Transport
Corporation Limited,
Kumbakonam,
Trichy - 620 001.

... Appellant / Respondent

versus

Aasiyabanu

... Respondent / Petitioner

Prayer : This Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 05.02.2015 made in M.C.O.P.No.6 of 2014 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Namakkal.

For Appellant : Mr.D.Venkatachalam
For Respondent : Mr.Ma.P.Thangavel

JUDGMENT

The claimant S.Aasiyabanu, aged about 42 years, doing a business of garment (self employment) and earning a sum of Rs.10,000/- p.m., met with an accident on 28.10.2013 and sustained injuries. Hence, she filed a claim petition in M.C.O.P.No.6 of 2014 before the Motor Accident Claims Tribunal, Additional District Judge, Namakkal, claiming compensation of Rs.10,00,000/-.

1.1. As against the claim made, the Tribunal has awarded a sum of Rs.7,41,225/- as compensation. The break-up details of the compensation read as under:

Loss of earning capacity	-	Rs.5,26,500/-
(Rs.6500 x 12 x 15 x 45%)		
Medical expenses as per bill	-	Rs.1,44,725/-
Transportation	-	Rs. 5,000/-
Pain and suffering	-	Rs. 25,000/-
Extra nourishment	-	Rs. 5,000/-
Attendant charges	-	Rs. 10,000/-

Loss of comfort	- Rs. 25,000/-
Total	- Rs.7,41,225/-

1.2. Challenging the finding on negligence and the quantum of compensation (as excessive), the Transport Corporation has filed this appeal.

2. The learned counsel appearing for the appellant would submit that the Tribunal ought not to have held that mere registering FIR against the driver of the appellant is more than enough for holding negligence on him; the Tribunal ought not to have considered the evidence of P.W.1, whose evidence has not been corroborated by any other independent witnesses and ought to have considered the evidence of R.W.1-Conductor and fixed the negligence on the rider of the motorcycle. It is further submitted that the Tribunal has taken the percentage of permanent disability at 45%, which is on higher side and when the disability suffered by the claimant would not affect her future income, the Tribunal ought not to have adopted the multiplier method to calculate loss of earning capacity. Hence, the award need to be interfered with.

3. The learned counsel appearing for the claimant/respondent herein would submit that the award passed by the Tribunal is reasonable and justifiable. Hence, the award need not to be interfered with.

4. In order to appreciate the contentions raised herein, it is necessary to look into the reasoning given in the award passed by the Tribunal.

4.1. So far as the negligence is concerned, the conductor of the offending bus was examined as R.W.1 and in his cross examination, he has admitted that a case has been registered against the driver of the bus. The best evidence available was not produced before the Tribunal, i.e. the driver has not been examined. In the absence of the best evidence being not available, the Tribunal has accepted the evidence of the claimant and that is justifiable.

4.2. So far as the quantum of compensation is concerned, the Tribunal, by relying upon the decision of the Supreme Court in the case of Syed Sadiq etc. vs. Divisional Manager, United India Insurance Co. Ltd., where, monthly income of a vegetable vendor was fixed at Rs.6,500/-, has fixed the monthly income of the injured at Rs.6,500/-. Though the injured has suffered 50% permanent disability, the Tribunal has taken the percentage of permanent disability at 45%, as the doctor has stated that after

taking the treatment, the injured has now been improved as that of before. Adopting the multiplier of 15, the Tribunal has quantified the compensation of loss of earning capacity at Rs.5,26,500/-.

4.4. The claimant has sustained fracture of left ankle, fracture of cuboid bone in the foot, fracture of 2nd metatarsal bone at bottom and has underwent four surgeries. Plastic surgery has also been done. Doctor has spoken about practical difficulty in standing, sitting in cross leg and other problems. Therefore, the loss of earning capacity has been considered to the extent of disablement.

4.5. As there was a proof to show the expenses for medical treatment (Ex.P4) at Rs.1,44,725/-, the Tribunal has awarded the said amount under the head 'medical expenses'.

4.6. it is relevant to point out that while considering loss of earning capacity, the future prospective increase in income has not been taken into account.

4.7. Therefore, considering the nature of injuries and period of treatment, impact of physical disability upon the functional disability, the award cannot be said to be excessive.

5. In the result, the Civil Miscellaneous Appeal is dismissed, confirming the award dated 05.02.2015 passed in M.C.O.P.No.6 of 2014 by the Motor Accident Claims Tribunal, Additional District Judge, Namakkal.

6. The Transport Corporation shall deposit the entire award amount, less the amount already deposited if any, along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit, within a period of six weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the claimant is permitted to withdraw the same. No costs. Consequently, connected miscellaneous petition is closed.

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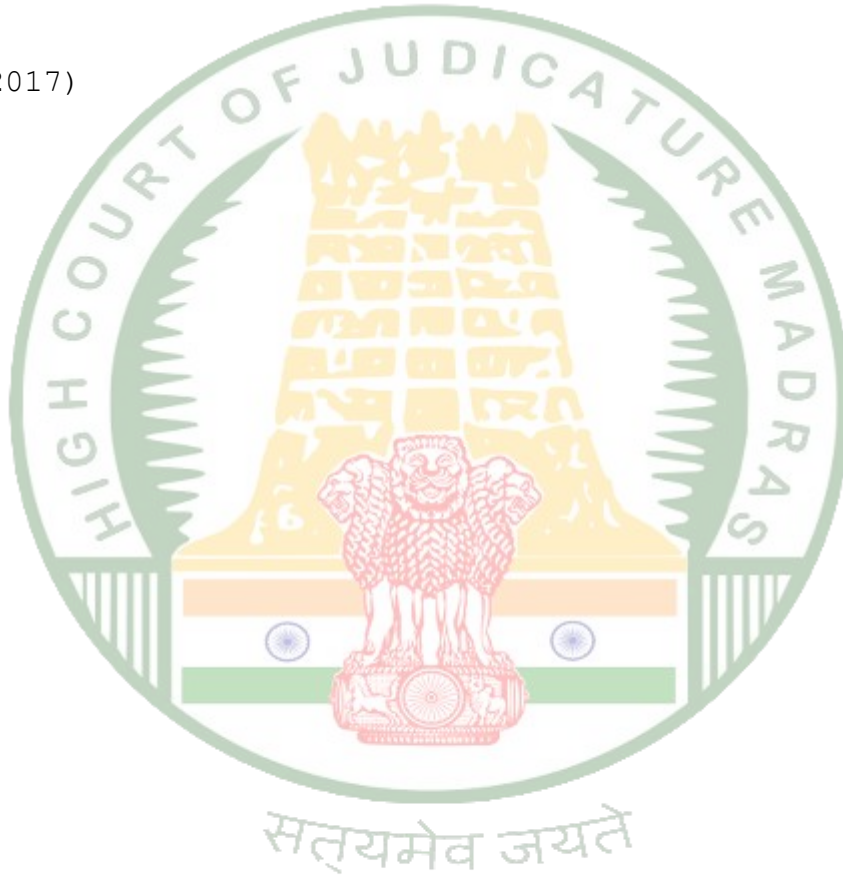
1. The Motor Accident Claims Tribunal
(Additional District Judge), Namakkal.

+1cc to M/S.Ma.P.Thangavel, Advocate Sr. 1541

+1cc to Mr.D.Venkatachalam, Advocate Sr. 1965

C.M.A.No.2330 of 2016

GJII(CO)
VR(30/10/2017)



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