

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 12.01.2017

CORAM

THE HONOURABLE DR. JUSTICE S.VIMALA

C.M.A. No.230 of 2017 &
C.M.P.No.1949 of 2017

Metropolitan Transport Corporation Limited
Rep. by its Managing Director
Anna Salai, Chennai - 2.
Appellant/Respondent

Versus

S.Susheel Francies
Petitioner

.. Respondent/

Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 19.11.2013 made in M.C.O.P.No.3828 of 2011 on the file of the Motor Accident Claims Tribunal, (III Court of Small Causes), Chennai.

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For appellant : Mr.S.Sivakumar

J U D G M E N T

Challenging the negligence as well as the quantum of compensation

awarded by the Claims Tribunal, in M.C.O.P.No.3828 of 2011,dated 19.11.2013, the Transport Corporation has filed this Civil Miscellaneous Appeal.

2. On 20.01.2010 at about 21.30 hours, while the claimant was getting into the MTC bus bearing Regn. No.TN-01-N-4828 in MCC College Bus stop, at that time the driver of the bus, without ascertaining whether all the passengers have boarded the bus, moved the bus suddenly in a rash and negligent manner due to which, the claimant fell down on the road and sustained fracture in right ankle, pelvic fracture and also sustained grievous injuries. According to the claimant, the driver of the bus alone was solely responsible for the accident. The claimant was aged 25 years at the time of accident and he was working as an Internal Sales Engineer at Fewsto Control Pvt. Ltd., and earning Rs.12,735/- per month. The claimant claimed a total sum of Rs.25,00,000/- as compensation.

3. The Tribunal, after considering the oral and documentary evidence, awarded a total compensation of Rs.11,18,000/- together with interest at the rate of 7.5% per annum. The break-up details of the same are as under:

Loss of income	-	Rs. 60,000/-
Transport to Hospital	-	Rs. 15,000/-
Extra nourishment	-	Rs. 20,000/-
Medical Expenses	-	Rs. 2,15,000/-
Future Medical Expenses	-	Rs. 50,000/-
Attender Charges	-	Rs. 10,000/-

Loss of amenities of life	-	Rs. 25,000/-
Pain and sufferings	-	Rs. 75,000/-
Loss of earning capacity	-	Rs. 6,48,000/-
Total		Rs.11,18,000/-

4. Challenging the compensation awarded as excessive and questioning the fixing of negligence, the Transport Corporation has filed this appeal.

5. The main contention of the learned counsel for the appellant is that the Tribunal ought to have fixed 50% of the liability on the claimant, since the claimant only invited the above said accident. Further, the Tribunal erred in granting award on various heads to the tune of Rs.11,18,000/- without proper documentary evidence and it is highly excessive and arbitrary. It is further submitted that the Tribunal, without any documentary evidence to prove the income of the claimant, has adopted multiplier of 18 multiplier and awarded Rs.6,48,000/- towards loss of earning power, which is unsustainable.

6. This Court gave its anxious consideration to the contention advanced by the learned counsel for the appellant and perused the materials available on record as also the award passed by the Tribunal.

7. A perusal of the award passed by the Claims Tribunal reveals that the Tribunal based on Ex.P11- salary certificate has fixed the income of the claimant at Rs.10,000/- per month and by considering the nature of injuries sustained and

the period of treatment taken by the injured came to the conclusion that the injured may not be in a position to work for atleast for six months and, therefore, awarded a sum of Rs.60,000/- (10,000x6) towards Loss of income, which is reasonable. The Claims Tribunal, further taking into consideration the distance from the place of accident to the hospital and his place of residence has awarded a sum of Rs.15,000/- towards Transport Expenses, which is also not excessive. Considering the nature of injury sustained and the period of treatment, a sum of Rs.20,000/- has been awarded towards extra nourishment and based on Exs.P-7 and P-8 Medical bills, the Tribunal has awarded a sum of Rs.2,15,000/-, which cannot be said to be arbitrary or excessive.

8. The claims Tribunal on considering the evidence of P.W.2- the Doctor who examined the claimant and also considering Ex.P14, estimation towards future medical expenses has held that the injuries suffered show that there is possibility of incurring future medical expenses and, therefore, awarded a sum of Rs.50,000/- towards future medical expenses. A sum of Rs.10,000/- has been awarded towards attender charges and a sum of Rs.75,000/- has been awarded towards Pain and sufferings. The compensation awarded under the above heads are reasonable and cannot be said to be excessive.

9. Insofar as the compensation awarded towards disability is concerned, though P.W.2, the Doctor who examined the claimant has assessed the disability at 70% , however, the Tribunal has conservatively fixed the disability at 30% and by adopting multiplier of 18 has awarded a sum of Rs.6,48,000/-

(10,000x12x18x30%) towards Loss of earning capacity. The above quantification is based not only on documentary evidence but also on the basis of reasonings supported by materials available on record. Therefore, the compensation awarded under the head disability and subsequent loss of earning capacity cannot be termed as excessive and, accordingly the same is confirmed.

10. Insofar as the contention towards contributory negligence is concerned, the Tribunal, on consideration of Ex.P1-First Information Report and taking into consideration the inconsistent stand taken by the appellant in its counter vis-a-vis the deposition of R.W.1 has come to the correct conclusion that the accident had happened due to the rash and negligent driving by the driver of the transport corporation and, accordingly, fastened the negligence on the appellant. This Court has perused the materials available on record as also the finding of the Tribunal on the aspect of negligence and on a careful consideration of the same, is of the considered opinion that the Tribunal has analysed the evidence in proper perspective and has come to the right conclusion and, therefore, the said finding warrants no interference.

11. For the reasons aforesaid, this appeal, being devoid of merits, is liable to be dismissed and, accordingly, the same is dismissed confirming the order passed by the Tribunal. No costs. Consequently, connected Miscellaneous Petition is dismissed.

12. The appellant/Transport Corporation is directed to deposit the award

amount along with interests and costs as ordered by the Tribunal, less the amount, if any, already deposited, to the credit of the claim petition, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the amount directly to the bank account of the claimant/first respondent through RTGS within a period of two weeks thereafter.

12.01.2017

Index : Yes/No

arr/GLN

To

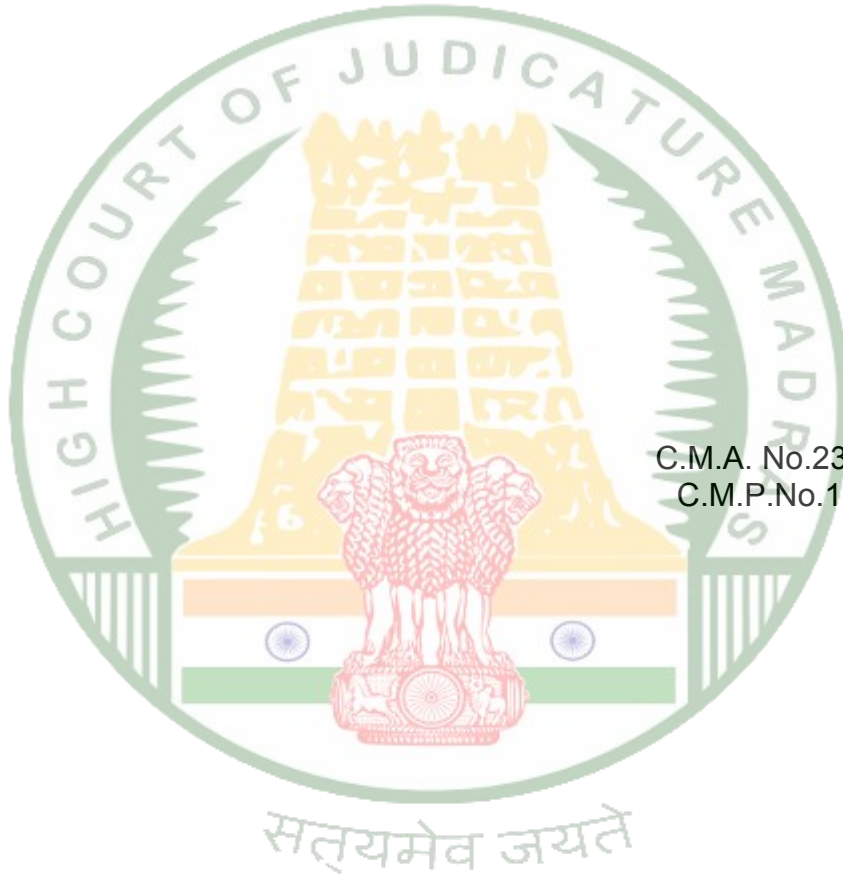
1. The Motor Accidents Claims Tribunal,
III Court of Small Causes, Chennai.

2. The Section Officer, VR Section,
High Court, Madras.

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DR.S.VIMALA, J.

arr/GLN



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C.M.P.No.1947 of 2017

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