

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.11.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3163 of 2017

The Managing Director,
Andhrapradesh State
Transport Corporation,
Musheerabad, Hyderabad,
Andhra Pradesh State.

... Appellant/Respondent

Vs.

Rajendra @ Rajendran

... Respondent/Petitioner

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, against the judgment and decree dated 07.08.2015 made in M.C.O.P.No.2795 of 2013 on the file of the Special Sub Court, Motor Accidents Claims Tribunal at Krishnagiri.

For Petitioner : M/s.G.V.Shoba

JUDGMENT

The Civil Miscellaneous Appeal is filed against the judgment and decree dated 07.08.2015 made in M.C.O.P.No.2795 of 2013 on the file of the Special Sub Court, Motor Accidents Claims Tribunal at Krishnagiri.

2. The appellant is the respondent and respondent is the petitioner in M.C.O.P.No.2795 of 2013 on the file of the Special Sub Court, Motor Accidents Claims Tribunal at Krishnagiri. The respondent filed the said M.C.O.P. for claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in the accident that occurred on 29.02.2012.

3. According to the respondent, on 29.02.2012, while he was proceeding in his TVS-50 from his village to pour the milk to society at Ram Nagar and was returning back to his village, the bus belonging to the appellant Transport Corporation bearing Registration No. AP-11-Z-4171 was driven by its driver in rash

and negligent manner, dashed against the respondent and caused accident. Due to the said impact, the respondent sustained multiple injuries all over his body. According to the respondent, the accident had occurred only due to the rash and negligent driving of the driver of the bus belonging to the appellant. At the time of accident, the respondent was 41 years old, he was an agriculturist and employee in Forest Department as line watcher. He was earning Rs.12,000/- per month from his agricultural income and Rs.8,000/- from his Government duty.

4. The appellant/Transport Corporation filed counter statement and denied all the averments made by the respondent. According to the appellant, on the date of accident, the driver of the bus drove the vehicle slowly at moderate speed. While the bus was proceeding near the milk society, the respondent came in a high speed in his TVS-50 from opposite direction. While the respondent was over taking one ambulance, he lost his control, hit against the bus and thus, caused the accident. Therefore, the appellant is not liable to pay compensation to the respondent.

5. Before the Tribunal, the appellant examined one S.P.Karremullah as R.W.1 and marked one document as Ex.R1. The respondent examined himself as P.W.1 and examined the doctor, who gave treatment, as P.W.2 and marked seven documents as Exs.P1 to P7.

6. The Tribunal after considering the pleadings, oral and documentary evidence came to the conclusion that the appellant was responsible for the said accident and awarded a sum of Rs.2,69,700/- as compensation to the respondent/claimant.

7. Against the said award passed by the Tribunal, dated 07.08.2015 made in M.C.O.P.No.2795 of 2013, the Appellant/Transport Corporation has filed the present Civil Miscellaneous Appeal.

8. The learned counsel for the appellant submitted that the Tribunal failed to appreciate the evidence of R.W.1, which clearly proves the fraudulent act of the respondent herein. The two vehicles belonged to both the appellant and respondent are involved in the accident and hence, contributory negligence has to be fixed by the Tribunal. The Tribunal failed to note that the entire medical records submitted by the respondent is bogus, created and manipulated for the purpose of this case. The Tribunal has erred in fixing the disability as 70% and also

fixing Rs.3,000/- for 1% disability in any event erroneous in the absence of proper records. The compensation amount awarded by the Tribunal is also very high.

9. I have heard the learned counsel for the appellant and perused all the materials available on record.

10. The respondent/P.W.1 in his evidence deposed that the driver of the appellant bus alone drove the bus in a rash and negligent manner and dashed against the respondent. The Tribunal considering Ex.P1/FIR and evidence of P.W.1/respondent herein, held that the accident occurred due to the negligent act of the driver of the vehicle belonging to the appellant bus. I do not find any error in the reasoning of the Tribunal.

11. As far as the quantum of compensation is concerned, P.W.2/Doctor assessed disability of the petitioner as 70% by considering Ex.P2/wound certificate and Ex.P6/X-ray and issued Ex.P7/disability certificate. The appellant has not examined any expert to disprove the percentage of disability assessed by P.W.2/Doctor. Therefore, the Tribunal fixed Rs.3,000/- for each percentage of disability. Hence, the respondent is entitled to Rs.2,10,000/- towards permanent disability. The Tribunal after considering Ex.P4/medical bill awarded Rs.3,200/- towards medical expenses. The Tribunal also awarded Rs.1,500/- towards future medical expenses, Rs.10,000/- for nutrition and transportation, Rs.5,000/- towards attender charges, Rs.25,000/- towards pain and sufferings. The respondent has stated in his proof affidavit that he has earned Rs.20,000/- per month by doing agricultural work in his own land and also employed as line watcher in Forest Department. Hence, the Tribunal fixed the monthly income of the respondent as Rs.5,000/-. Further, the Tribunal held that due to the injury sustained by the respondent, he was not able to do his daily work atleast for three months. So the Tribunal fixed the partial loss of income as Rs.15,000/- ($\text{Rs.5000} \times 3 = \text{Rs.15,000}$). Totally, the Tribunal awarded Rs.2,69,700/- as compensation to the respondent. In my considered opinion, the compensation awarded by the Tribunal is just and reasonable. In the above circumstances, this Court is not inclined to interfere with the award passed by the Tribunal.

12. Accordingly, the award passed by the Tribunal is hereby confirmed and the Civil Miscellaneous Appeal is dismissed. The Appellant Transport Corporation is directed to deposit the award amount along with accrued interest and costs, less the amount deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the

respondent/claimant is permitted to withdraw the award amount, less the amount already he has withdrawn. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

The Special Sub Judge,
Motor Accidents Claims Tribunal
Krishnagiri.

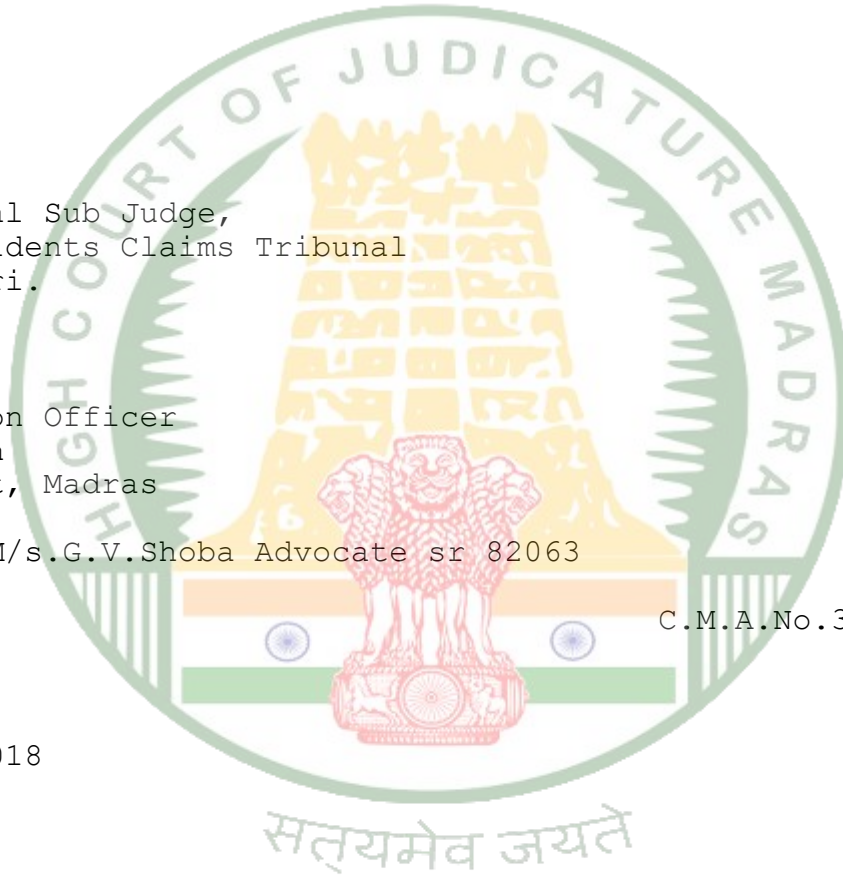
copy to

The Section Officer
VR Section
High Court, Madras

+1 cc to M/s.G.V.Shoba Advocate sr 82063

C.M.A.No.3163 of 2017

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