



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.11.2017

CORAM :

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHANC.M.A.(MD)No.129 of 2015 and
CROS.OBJ(MD)No.15 of 2015**C.M.A.(MD)No.129 of 2015**

The Managing Director,
Tamil Nadu State Transport Corporation,
Kumbakonam, Railway Station New Road,
Kumbakonam.

... Appellant

Vs.

1. Ramamoorthy
2. Govindaraj

3. The Oriental Insurance Company Limited,
Kumbakonam, Represented by Its Branch Manager,
Gopal Rao Library Building,
Town Hall Road, Kumbakonam.

... Respondents

Prayer: Appeal filed under Section 173 of Motor Vehicles Act, 1988, set aside the judgement and decree dated 31.07.2014 passed in M.C.O.P.No.99 of 2012 on the file of the Motor Accident Claims Tribunal/Principal Sub-Court, Kumbakonam.

For Appellant	: Mr.P.Prabhakaran
For Respondents	: Mr.S.Rajaprabu for R.1
	No Appearance for R.2
	: Mr.K.Bhaskaran for R.3

CROS.OBJ.(MD)No.15 of 2015

Ramamoorthy

... Cross Objector

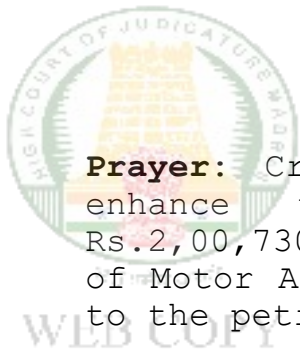
Vs.

1. The Managing Director,
Tamil Nadu State Transport Corporation (Kumbakonam)
Railway Station New Road, Kumbakonam.

2. Govindaraj

3. The Oriental Insurance Company Limited,
Kumbakonam,
represented by Branch Manager,
Gopal Rao Library Building, Town Hall Road,
Kumbakonam.

... Respondents



Prayer: Cross Objection filed under Order 41 Rule 22 C.P.C, to enhance the compensation awarded by the Tribunal from Rs.2,00,730/- to Rs.5,00,000/- in M.C.O.P.No.99 of 2012 on the file of Motor Accident Claims Tribunal / Principal Sub Court, Kumbakonam to the petitioner against the respondents.

For Cross Objector : Mr.S.Rajaprabu
For Respondents : Mr.P.Prabhakaran for R.1
Mr.K.Bhaskaran for R.3
No Appearance for R.2

JUDGMENT

This civil miscellaneous appeal has been filed by the appellant, questioning the award dated 31.07.2014 made in M.C.O.P.No.99 of 2012, on the file of the Motor Accident Claims Tribunal/Principal Sub Court, Kumbakonam.

2.The claimant has filed this appeal seeking enhancement. The claimant namely Ramamoorthy met with an accident on 30.09.2011. When he was travelling in an Ambassador Car on 30.09.2011, a bus belonging to TNSTC, Kumbakonam dashed against the said vehicle. The vehicle was insured with the third respondent herein. The claimant filed M.C.O.P..No.99 of 2012 seeking compensation of a sum of Rs.15,00,000/-. The Tribunal by award dated 31.07.2014, granted a sum of Rs.2,00,730/- with 7.5% interest. Questioning the said award, the Transport Corporation has come on appeal. The claimant has also filed a Cross Objection seeking enhancement.

3.Heard the learned counsel for the petitioner and learned counsel for the respondents 1& 3.

4.The learned counsel appearing for the Corporation would contend that the First Information Report was registered against the driver of the Ambassador car. He would therefore contend that the negligence can be equally fastened on the car driver and the bus driver. However, it is seen that on the side of the Appellant Corporation the bus driver was not examined. When the Appellant Corporation pleads contributory negligence, the onus is on them to prove the same. In this case as much as the same was not done. I am not inclined to accept the contention of learned counsel for the appellant Corporation. I sustain the findings of the Tribunal that the accident took place on account of the rash and negligent driving on the part of the bus driver.

5. Coming to the quantum of compensation awarded to the claimant, I am of the view that the same has to be re-worked. The claimant has suffered injury on his cervical spine. On account of the said injury caused to his nerves, the movement of his limbs is severely impaired. The doctor has also certified that the claimant has suffered 50% disability.



6. Therefore, the compensation payable to the claimant can be re-worked as under:-

Sl.No	Heads	Amount in Rs.
1.	50% Disability (1%=Rs. 3,000)	Rs. 1,50,000/-
2.	Pain and Suffering	Rs. 75,000/-
3.	Medical Expenditure	Rs. 1,15,000/-
4.	Transport charges	Rs. 5,000/-
5.	Extra Nourishment	Rs. 5,000/-
6.	Future Medical Expenses	Rs. 50,000/-
	Total =	Rs. 4,00,000/-

7. The compensation payable to the claimant is enhanced from Rs.2,00,730/- to Rs.4,00,000/-. The Transport Corporation/appellant is directed to pay the said amount with interest at the rate of 7.5% per annum with cost, from the date of petition till the date of realization within eight weeks from the date of receipt of a copy of this order, less the amount already deposited, if any to the credit of M.C.O.P.No.99 of 2012 on the file of the Motor Accidents Claims Tribunal/Principal Sub Court, Kumbakonam. On such deposit, the claimant is permitted to withdraw the same, less the amount already withdrawn by them, if any. The award passed by the Tribunal is accordingly modified. This Civil Miscellaneous Appeal is dismissed. Accordingly, the cross objection is partly allowed. No costs.

Sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To

1. The Principal Subordinate Judge,
Motor Accidents claims Tribunal,
Kumbakonmam.
2. The Record Keeper,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+ 1 CC TO Mr.S.RAJAPRABU, ADVOCATE IN SR No. 84847

DSS/KMI

TE/SV-MMS/SAR-4 : 29/01/2018 : 3P/5C