



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 08.08.2017
CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

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C.M.A.No.73 of 2011
and
M.P. (MD)No.2 of 2011

M/s. Tamilnadu State Transport Corporation Ltd,
Periyamilaguparai
Trichy-1.

... Appellant/ Respondent

Vs.

Dharma Lingam

...Respondent/ Petitioner

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree passed in M.C.O.P.No.1606 of 2004 dated 06.12.2006 on the file of the Motor Accident Claims Tribunal, (III Additional Subordinate Judge), Tiruchirapalli.

For Appellant : Mr.S.C.Herold Singh

For Respondent : No appearance

J U D G M E N T

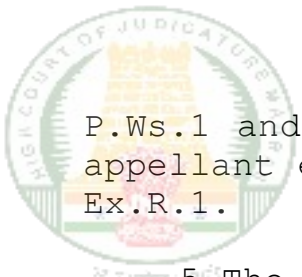
This Civil Miscellaneous Appeal has been filed by the appellant/Transport Corporation against the award of the Motor Accident Claims Tribunal (III Additional Subordinate Judge), Tiruchirapalli., dated 06.12.2006 made in M.C.O.P.No.1606 of 2004.

2. It is a case of injury, which was caused due to the accident, which had taken place on 09.04.2004 at about 21.30 hours at Madurai Road, in which, the driver of the bus bearing Registration No.TN-45-M-1156, belongs to the appellant/Transport Corporation, moved the vehicle in a rash and negligent manner without noticing the petitioner, who put his one leg in the front foot board and the other leg on the ground and due to that, the injured sustained multiple grievous injuries.

3. The claimant filed an application in M.C.O.P.No.1606 of 2004 on the file of the Motor Accident Claims Tribunal, III Additional Subordinate Judge, Tiruchirapalli, seeking compensation.

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4. Before the Tribunal, the Claimant examined two witnesses as



P.Ws.1 and 2 and marked eight documents as Ex.P.1 to Ex.P8. The appellant examined one witness as R.W.1 and marked one document as Ex.R.1.

5. The Tribunal, after considering the pleadings, oral and documentary evidence and the arguments advanced on either side and also appreciating the evidence on record, held that the accident occurred only due to the rash and negligent driving of the driver of the appellant/Transport Corporation and directed the appellant/Transport Corporation to pay a sum of Rs.2,04,740/-, as compensation.

6. Against which, the appellant/Transport Corporation has filed this present appeal challenging the negligence as well as quantum.

7. With regard to negligence, the learned counsel appearing for the appellant submitted that the driver of the appellant was acquitted by the court below stating that there is no negligence on the part of the driver. He further submitted that since the injured has not caught hold the handle firmly, he fell down and therefore, the fixation of contributory negligence fixed on the injured and the driver of the Transport Corporation, by the Tribunal at 20:80, is not at all correct and therefore, the finding of the Tribunal warrants interference at the hands of this Court.

8. With regard to quantum, the learned counsel appearing for the appellant/Transport Corporation contended that when there is no proof for the age and income of the injured, the compensation awarded by the Tribunal at Rs.2,04,740/- is on higher side and therefore, the same is to be reduced.

9. Heard the submissions made and perused the materials available on record.

10. A perusal of the award shows that the Tribunal, while discussion with regard to liability, has perused the deposition of the driver of the bus, who was examined as D.W.1, wherein, he has stated that after 100 feet from the bus stop, the claimant tried to mount on the bus. Further, the Driver of the bus has produced the judgment of the lower Court, in which he was acquitted from the charge of negligence in driving. But, he has not given any prior complaint to prove the fact that there is no negligence on his part. In view of the above facts only, the Tribunal has rightly fixed 20% negligence on the claimant and 80% negligence on the driver of the appellant/Transport Corporation. Therefore, there is no infirmity in the finding given by the Tribunal, with regard to negligence.

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11. In respect of quantum, it is an unfortunate case, where a person sustained 65% disability and is not in a position to do any

work and therefore, the disability should be considered as 100%. But, the learned Judge had awarded lesser compensation. Even though the claimant has not filed any appeal seeking enhancement of compensation, this Court feels that ends of justice would be met only if multiplier method is adopted and the compensation awarded on the head of loss of income is increased.

12. With regard to quantum of compensation, the injured was stated to be earning a sum of Rs.150/- per day, as a Coolie. Therefore, considering the future prospects, his loss of income is fixed at Rs.4500/- and since the age of the injured was found to be 49 years, the appropriate multiplier to be applied as per the **Smt. Sarla Verma .vs. Delhi Transport Corporation reported in 2009 (2) TN MAC 1(SC)** case, is '13' and therefore, the loss of income would be Rs.4500 X 12 X 13 = Rs.7,02,000/-, and therefore, the compensation awarded for loss of income is enhanced to Rs.7,02,000/-. Since multiplier method is adopted, the compensation awarded for disability at Rs.97500/- and the compensation awarded for future loss of income at Rs.50,000/- are deleted and the compensation awarded under the other heads are confirmed.

13. In view of the settled position of law, this Court modifies the award of the Tribunal by enhancing the compensation, as under:-

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	For loss of income		7,02,000	awarded
2.	For disability	97,500		deleted
3.	For pain and sufferings	50,000	50,000	confirmed
4.	For medical expenses	51,425	51,425	Confirmed
5.	For future loss of income	50,000		deleted
6.	For Transportation	5,000	5,000	confirmed
7.	For Extra Nourishment	2,000	2,000	confirmed
	Total	Rs.2,55,925	Rs.8,10,425	By enhancing a sum of Rs.5,54,500/-

14. In the result,

(i) This Civil Miscellaneous Appeal is dismissed. However, considering the peculiar facts and circumstances of the case, the compensation awarded by the Tribunal is enhanced from Rs. **2,55,925/-** (Rupees Two Lakhs Fifty Five Thousand Nine Hundred and Twenty Five Only) to a sum of **Rs.8,10,425/-** (Rupees Eight Lakhs Ten Thousand Four Hundred and Twenty Five only) along with interest at the rate of 7.5% per annum from the date of petition till date of realisation and proportionate costs.

(ii) The appellant/Transport Corporation is directed to deposit their share of 80% of the award amount to the credit of M.C.O.P., on the file of claims Tribunal within a period of eight weeks from the date of receipt of a copy of this order, less the amount already deposited if any.

(iii) The respondent claimant is directed to pay the Court Fees for the enhanced compensation, within a period of **two weeks** from the date of receipt of a copy of this judgment;

(iv) On such deposit being made by the appellant, the respondent is permitted to withdraw the entire amount with accrued interests and costs, without filing any formal application before the Tribunal. No Costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-I)

/True copy/

Sub Assistant Registrar

To,

1. The IIIrd Additional Subordinate Judge
The Motor Accident Claims Tribunal,
Tiruchirapalli.

2. The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+2 cc to Mr.S.C.Herold Singh , Advocate in SR.No. 64791,71087

PM/CM

AE/SV/SAR2/21.09.2017/4P/5C

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and

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