

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 26.10.2018

CORAM:

THE HONOURABLE Tmt. JUSTICE S. RAMATHILAGAM

C.M.A.No.2212 of 2006  
and  
C.M.P.No.8986 of 2006

The Managing Director,  
Tamilnadu State Transport Corporation Ltd.,  
Kancheepuram. ... Appellant/1<sup>st</sup> Respondent

Versus

1. K. Amulu ...1<sup>st</sup> Respondent/Claimant  
2. Abdul Hakeem  
3.The National Insurance Company Ltd.,  
No.751, Third Floor, Anna Salai,  
Chennai - 600 002. ... Respondents 2 & 3/  
Respondents 2 & 3

Prayer : Civil Miscellaneous Appeal filed under Sections 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 06.04.2005 made in M.A.C.T.O.P.No.638 of 2003 on the file of the Motor Accident Claims Tribunal, (Sub-Court), Tiruvallore.

For Appellant : Mr. P.G.Padmanabhan

For Respondents : No Appearance

J U D G M E N T  
सत्यमेव जयते

This Civil Miscellaneous Appeal has been preferred against the Judgment and Decree dated 06.04.2005 made in M.C.O.P.No.638 of 2003 on the file of the Motor Accident Claims Tribunal, (Sub-Court), Tiruvallore.

2. The brief facts of the case leading to the claim application are as follows :

On 10.10.2003 at about 11.15 hours., when the petitioner was traveling as a passenger in a bus bearing Registration No.TN 72 N 0599 in the Thiruttani By-pass Road which was driven by its driver in a rash and negligent manner, at that time, a Mini Lorry bearing Registration No.AP 26 U 2211 which came in the

opposite direction in a rash and negligent manner, dashed against the said bus in which the petitioner was travelling and the petitioner including the other passengers of the bus had sustained grievous and multiple injuries. Hence, it is stated by the claimant that both the drivers of the said two vehicles are responsible for the accident. Hence, the claimant has claimed a sum of Rs.4,00,000/- as compensation under various heads.

3. The first respondent in the counter statement denied the accident and also stated that the sum claimed by the claimant under various heads is excessive in the absence of any proof. The responsibility of driving the vehicle in a rash and negligent manner was shifted on the lorry by the first respondent.

4. The 3rd respondent has also stated in the counter statement that the driver of the said vehicle did not possess any valid license at the time of accident and hence, he has violated the policy condition and further, the nature of injuries sustained by the claimant and the claim made by him is also very much denied by the third respondent.

5. The Tribunal, after analyzing the evidence and documents placed before it, has given a finding that it is the first respondent who is responsible for its rash and negligent driving which resulted in the accident and has fixed the liability on the first respondent by holding the claim made against the 2 and 3 respondents are liable to be dismissed. The Tribunal, after analysing the nature of injury, age and the disability sustained by the claimant has awarded a sum of Rs.3,61,000/- under various heads as follows:

| Heads                     | Amount awarded by the Tribunal |
|---------------------------|--------------------------------|
| For Disability            | 85,000.00                      |
| For Loss of earning power | 1,75,000.00                    |
| For Pain and Sufferings   | 50,000.00                      |
| For Loss of Income        | 36,000.00                      |
| For Medical Expenses      | 5,000.00                       |
| For Transportation        | 5,000.00                       |
| for Nourishment           | 5,000.00                       |
| TOTAL                     | 3,61,000.00                    |

Aggrieved against the sum awarded by the Tribunal, the Transport Corporation has preferred this appeal.

6. In the grounds of appeal, the appellant has stated that the monthly income taken for consideration by the Tribunal at Rs.3,000/- per month is not proper without any documentary evidence. The sum awarded at Rs.85,000/- towards disability is also very much excessive by merely examining PW3. The sum awarded at Rs.1,75,000/- as loss of earning power is also very much on the higher side. The other sum awarded for medical expenses, transport and nourishment are also on the higher side without any documents or evidence placed before the Tribunal. Hence, on the whole, the sum awarded at Rs.3,61,000/- and the interest at 9% per annum is very much excessive.

7. The appellant has argued that since the findings of Tribunal is based on the FIR, the liability fixed on the Transport Corporation is not justified. The Tribunal after verifying Ex.P1, FIR in which the negligence was stated on the part of the driver of the Transport Corporation bus and Ex.P3 charge-sheet which also proves that only the driver of the Transport Corporation bus is responsible for the rash and negligent driving of the accident, hence the negligence fixed on the part of the driver of the bus is not to be interfered with since it is based on the evidence and documents. The complaint has also been by the driven of the Mini Lorry.

8. It is argued that the Tribunal has awarded a very huge sum when there is only simple injuries and the Tribunal has also taken the disability as spoken by the doctor-PW3 without analyzing the exact disability at the correct sense. But, on perusal of the document, the accident register which is Ex.P10, it is seen that the injured/claimant has sustained injuries in his head and the same was also treated by way of giving sutures and he has been treated at Government Hospital Thiruttani.. The occupation of the claimant is stated as coolie and it is clear that because of the injuries sustained in his fore head and also in the muscles in his neck is very much affected, hence the petitioner could not able to continue his job as a loan man. The evidence of PW3 who assessed the disability at 25% has been reasonably accepted by the Tribunal and awarded a sum of Rs.85,000/- for the disability. Since the petitioner's occupation is very much relied upon, the loss of earning power has been assessed by the Tribunal at Rs.1,75,000/- is also not on the higher side.

9. It is also seen that the petitioner was given treatment for 3 times and the bones in his both legs got fracture which are very much observed from the discharge summary Ex.P6. Surgery was also done to him and inspite of the surgery by fixing plate,

his original health condition was not restored. Because of the inefficiency of his legs and hand, his occupation as Assistant for the Mason is very much affected which depends upon his legs and hands. As per Ex.P12, the disability assessed by the doctor at 85% has been very much considered by the Tribunal and awarded a sum of Rs.1,75,000/- under the head "loss of earning power". While considering the disability at 85%, the nature of injuries and also the period of treatment and disability, the sum awarded by the Tribunal at Rs.50,000/- for pain and sufferings is not on the higher side. Because of the injuries and treatment, the Tribunal has assessed for the loss of income at Rs.36,000/- by fixing a monthly earning at Rs.3,000/-, hence it does not require any modification. The Tribunal has considered the age of the claimant as 30 years and his occupation as helper to the Mason, he would have earned Rs.100/- per day, hence the Tribunal has taken Rs.3000/- per month and calculated at Rs.36,000/- as loss of income, which this Court finds proper and reasonable. The sum awarded under the head of transport expenses Rs.5000/- and for medical expenses Rs.5000/- and for nourishment Rs.5000/- and also arrived a sum of Rs.3,61,000/- is very much reasonable. Hence the award passed by the Tribunal and the findings of the Tribunal does not require any interference.

10. In total, the Tribunal granted a sum of Rs.3,61,000/- together with interest at the rate of 9% per annum from the date of filing the petition till the date of compensation into the court in M.C.O.P.No.638 of 2003 which this Court considers as fair and reasonable. No interference is required in the said award.

11. In the result, this Civil Miscellaneous Appeal is dismissed and the award and decree passed by the Motor Accident Claims Tribunal (Sub-Court), Tiruvallore in M.C.O.P.No.638 of 2003 is confirmed. Accordingly, the appellant/ Transport Corporation is directed to deposit the entire award amount by the Tribunal, with interest and costs, after adjusting the amount, if any, already deposited, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer the same to the claimant's bank account through RTGS within one week thereon. Consequently, the connected miscellaneous petition is closed. No costs.

Sd/-  
Assistant Registrar

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Sub Assistant Registrar

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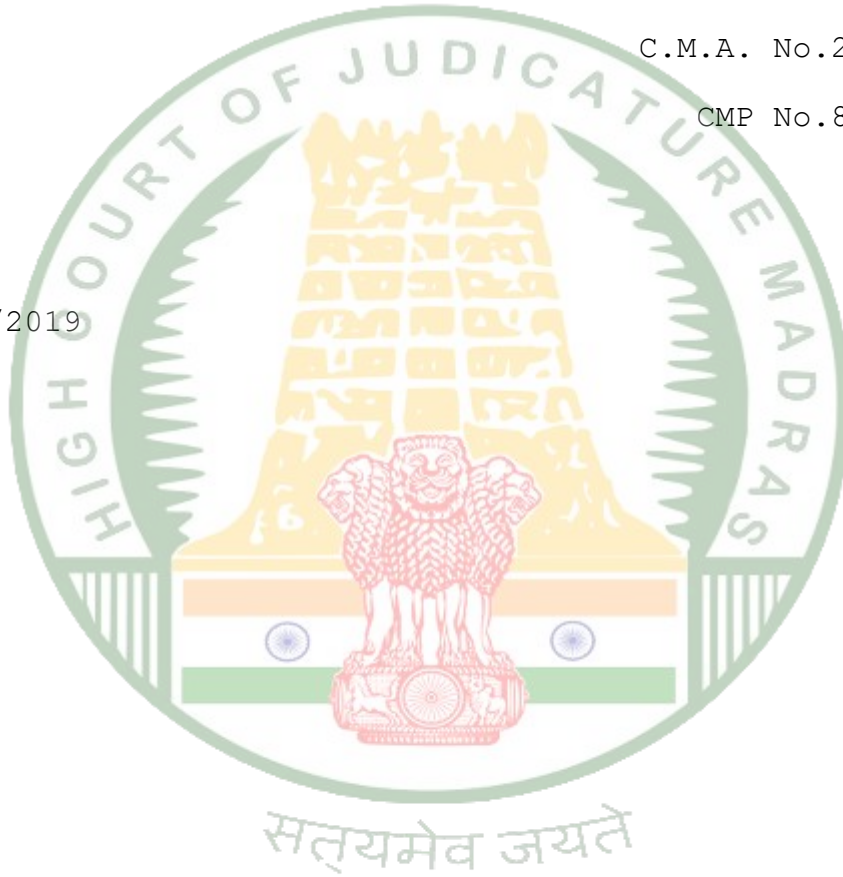
To

The Motor Accident Claims Tribunal,  
Sub-Court, Tiruvallore.

+lcc to Mr.P.G.Padmanabhan, Advocate Sr.73371

C.M.A. No.2212 of 2006  
and  
CMP No.8986 of 2006

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