

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 02.11.2018
CORAM:
THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A. No.3273 of 2006 in
C.M.P.No. 3 of 2006

The Managing Director,
Tamilnadu State Transport Corporation Ltd.,
Kumbakonam Division -II,
Trichirapalli. .. Appellant/2nd respondent

Versus

1.Kannan ..1st Respondent/ Petitioner
2.K.S.Karmegavannan (Driver Given up)
..2nd Respondent/ 1st respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and award made in M.C.O.P.No.211 of 2003 dated 25.04.2005 on the file of Motor Accidents Claims Tribunal (Fast Track Court No.III), Namakkal.

For Appellant : Mr.D.Venkatachalam

For Respondents : No Appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred against the judgment and award made in M.C.O.P.No.211 of 2003 dated 25.04.2005 on the file of Motor Accidents Claims Tribunal (Fast Track Court No.III), Namakkal.

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

On 02.09.1999, at about 5.30 p.m, when the petitioner and his friend were travelling in the Bullet Motor Cycle bearing Registration No.TN 28 F 3973, the bus bearing Registration No.TN 45 N 1373 which was coming towards north to south in a rash and negligent manner and hit against the Motor Cycle, the petitioner and his friend sustained multiple and severe injuries all over the body. The Bullet Motor Cycle in which the petitioner was travelling also got damaged. Hence, he claimed a sum of Rs.5,00,000/-as compensation against the respondents.

3. The 1st respondent was set exparte before the Tribunal.

4. The 2nd respondent in the counter statement denied the accident as stated by the petitioner in the claim application. It has been stated in the counter that when the respondent bus was proceeding in the Salem Road, near RTO office, two lorries and one trailer lorry were parked. At that time, the Bullet Motor Cycle which was driven by the petitioner came in the right side of the parked lorry. All of a sudden, the said Motor Cycle also crossed the road and on seeing the same, the driver of the bus slow down the bus on the right side of the road and inspite of the efforts, it is the two-wheeler hit at the bus, due to which the petitioner had fallen down from the vehicle and he sustained injury. Hence, it is the petitioner who by his negligence crossed the road at the right side of the parked lorry and dashed against the right side of the bus and he sustained injury. It is also stated that there cannot be any rash and negligent driving at the place of occurrence, since it is a place where the RTO office is situated and there are many vehicles parked in that area. Hence, the facts stated in the claim application regarding the accident are totally false. The other aspects regarding the claim made by the petitioner viz., injury and loss of income are on the higher side.

5. The Tribunal after analyzing the evidence and documents has given a finding that it is a rash and negligent driving on the part of the driver of the bus, which resulted the accident. While fixing the compensation, the Tribunal has also considered the documents relating to injury, treatment, medical expenses and loss of income and arrived a sum of Rs.2,33,000/- as compensation. Aggrieved against the said liability and quantum, the Transport Corporation has preferred this appeal.

6. In the grounds of appeal, it has been stated that without considering the efforts taken by the driver of the appellant Corporation bus who had driven the same in slow and cautious manner to avoid the said accident, the liability fixed by the Tribunal on the appellant is not justified. Further, for determining the compensation, the multiplier method adopted by the Tribunal is also not justified. Further, the sum awarded under the head 'pain and sufferings' is also on the higher side and on the whole, the entire sum was awarded under various heads is highly excessive without any documents and evidence. The appellant has also argued that by fixing the liability on the Transport Corporation, the Tribunal has committed an error.

7. Heard both sides and perused the documents available on record.

8. On a perusal of Ex.P1-FIR and also Ex.P2 - charge sheet, it reveals the fact that the driver of the Transport Corporation bus is responsible for the accident and hence, based on the said evidence and documents, the Tribunal has fixed the liability on the Transport Corporation, which is solely responsible for the accident. Since the said finding is based on the documents, it need not be interfered with. While determining the compensation, it is observed that the petitioner sustained severe injuries on his head and all over the body and he was also under treatment in CM Hospital, Namakkal for 4 days and subsequently, in another hospital at Erode for 16 days. The said facts are very well spoken by PW3, Doctor and also proved before the Tribunal. It is also observed that the claimant was 29 years at the time of the accident and as a lorry and car broker he was earning Rs.15,000/- per month. Based on the evidence given by PW3- Doctor, with regard to the disability sustained by the petitioner due to the injuries, especially the injury on his brain and also the other injuries and the treatment were very much supported by the relevant documents.

9. The petitioner sustained seven injuries, for which treatment was properly given in various hospitals and the discharge summary Ex.P9 clearly shows about the treatments given to him and hence, the evidence of P.W.3, who has assessed the disability at 30% is very much reasonable and the Tribunal has also taken 30% as such for calculating the loss of income. The monthly income fixed by the Tribunal at Rs.3,000/- against the claim of Rs.15,000/- is reasonable. Accordingly, the loss of income calculated at Rs.1,94,400/- by adopting multiplier is also reasonable, hence the same does not require any interference. Further, the sum awarded for medical expenses is also based on Ex.P12 medical bills and the sum awarded for nourishment at Rs.5,000/- is also not on the higher side. Hence, the sum determined by the Tribunal by considering the nature of injury, disability, occupation and age of of the claimant are all very much reasonable and does not require any interference.

10. In the result, Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected miscellaneous petition is closed. The Appellant Transport Corporation is directed to deposit the entire Award amount along with interest as awarded by the Tribunal, if not 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.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

gbi/uma

To

1. The Motor Accidents Claims Tribunal
(Fast Track Court No.III),
Namakkal.

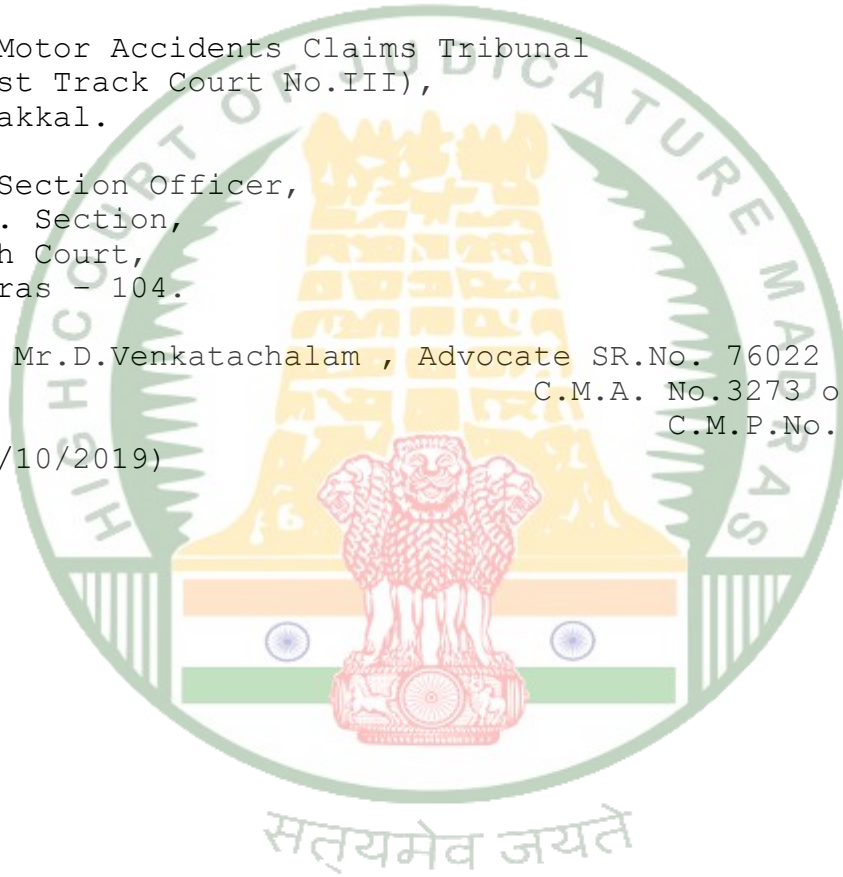
2. The Section Officer,
V.R. Section,
High Court,
Madras - 104.

+1cc to Mr.D.Venkatachalam , Advocate SR.No. 76022

C.M.A. No.3273 of 2006 in

C.M.P.No.3 of 2006

A.SK(01/10/2019)



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