

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.11.2018

CORAM
THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.1256 of 2011
and
Cross Objection No.17 of 2014
and
M.P.No.1 of 2011

Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Coimbatore Division I,
37, Mettupalayam Road,
Coimbatore.

... Appellant/1st Respondent
in Cross Objection

Vs.

1.K.Arulkumar

... 1st Respondent/Cross Objector

2.T.Natarajan
(R2 given up)

... 2nd Respondent in both

Prayer: Civil Miscellaneous Appeal the Cross Objection filed against the fair and decreetal order dated 02.12.2009 passed in MCOP.No.65 of 2008 by the learned II Additional Sub Judge, Motor Accident Claims Tribunal, Gobichettipalayam.

For Appellant in CMA
and for the First Respondent
in Cross Objection :: Mr.S.S.Swaminathan

For 1st Respondent in CMA/
and for Cross Objector :: Mr.Ma.P.Thangavel

J U D G M E N T

The Managing Director of Tamil Nadu State Transport Corporation filed CMA.No.1256 of 2011, questioning the compensation awarded by the II Additional Sub-Judge, Gobichettipalayam, in M.C.O.P.No.65 of 2008 on 02.12.2009.

2.The 1st respondent is the claimant in MCOP.No.65 of 2008 on the file of II Additional Sub-Judge, Gobichettipalayam. He filed the Cross Objection No.17 of 2014, seeking for enhancement

of compensation amount.

3.The brief case of the 1st respondent/claimant is as follows:

On 24.08.2007, the 1st respondent/claimant was travelling in a bus, owned by the 2nd respondent bearing Reg. No.TN 38 N 1079 from Coimbatore to Pollachi. When the bus was proceeded near by Premier Mills Market, the driver of the bus drove the bus rashly and negligently and hit a pedestrian and applied sudden brakes. Due to the said impact, the claimant, who was a passenger in the bus sustained grievous injuries and was immediately rushed to Balaji Hospital, Sundarapuram, from there, he was referred to Dhakshin Hospital, Gobichettipalayam. He was given treatment as an inpatient for 11 days.

4.According to the 1st respondent/claimant, he was 21 years old on the date of accident and was working as an operator in CNC earning a sum of Rs.5,000/- per month. His further contention is that the accident took place due to the rash and negligent driving of the driver of the bus, belonging to the appellant herein.

5.The appellant filed a counter affidavit before the trial Court, denying all the allegations of the claimant. The learned II Additional Sub-Judge, after analysing the evidence on record, awarded a sum of Rs.1,18,178/- with interest at the rate of 7.5% per annum from the date of filing of the MCOP. Aggrieved over the said award amount, the appellant herein has filed this Appeal.

6.Mr.S.S.Swaminathan, learned counsel appearing for the appellant contended that the trial Court wrongly adopted multiplier method, when the 1st respondent/claimant suffered only a fracture of bones and was not permanently disabled from doing his work. Per contra, Mr.M.A.P.Thangavel, learned counsel appearing for the 1st respondent/claimant contended that the 1st respondent was working as an operator in a private limited company and the doctor has also assessed the disability as 41%. A perusal of the medical records shows that the 1st respondent/claimant suffered fracture on left shaft of humerus. Fixation of locking plate and bone grafting were also done on 25.08.2007. Therefore the trial Court is not justified in reducing the percentage of disability without assigning any reason. Since the 1st respondent/claimant worked only as an operator in a private limited company, it cannot be said he had a functional disability, on account of accident. Therefore, the trial Court was wrong in adopting multiplier method.

7.Permanent disability:

The partial permanent disability assessed by the Doctor at 41% is taken up for calculating the partial permanent disability

suffered by the 1st respondent/claimant and a sum of Rs.2,000/- per percentage is awarded. Therefore the compensation for permanent disability comes to Rs.82,000/- (41 x Rs.2,000/-).

8.Pain and sufferings:

As far as pain and suffering is concerned, the trial Court has awarded a sum of Rs.5,000/-. In my opinion, it has to be enhanced to Rs.10,000/-

9.Loss of earning:

As far as loss of earning is concerned, the trial Court has awarded a sum of Rs.5,000/-. Since this is reasonable in the facts and circumstances of the present case, no enhancement is made under this head.

10. Similarly there is no reason to upset the award under the heads "Transportation", "Medical expenses" and "Damages to cloths and articles".

11.Thus the enhanced award amount is extracted hereunder:

Head	Amount (Rs.)
Permanent disability	82000
Pain and sufferings	10000
Loss of earning	5000
Transportation	3000
Medical expenses	27677.83
Damages to cloths and articles	1000
Total	128677.83

12.Hence, the total compensation payable in this case is Rs.128677.83/-. Rounded off to Rs.1,28,678/-

13.The appellant is directed to deposit the enhanced compensation amount together with interest at the rate of 7.5% per annum from the date of the claim petition, within a period of four weeks from the date of receipt of a copy of this order, less the amount already deposited. On such deposit being made, the 1st respondent/claimant is at liberty to withdraw the same, after following the necessary procedures. The 1st respondent/claimant is directed to pay necessary Court fee if any, for the enhanced award amount.

14.With the above observations, C.M.A.No.1256 of 2011 is dismissed and Cross Objection No.17 of 2014 is allowed partly. Consequently, connected miscellaneous petition is also closed. No costs.

Sd/-
Assistant Registrar (CS IV)

//True Copy//

Sub Assistant Registrar

sai

To

The II Additional Subordinate Judge,
Motor Accident Claims Tribunal,
Gobichettipalayam.

Copy To:

The Section Officer,
V.R.Section, High Court,
Madras.

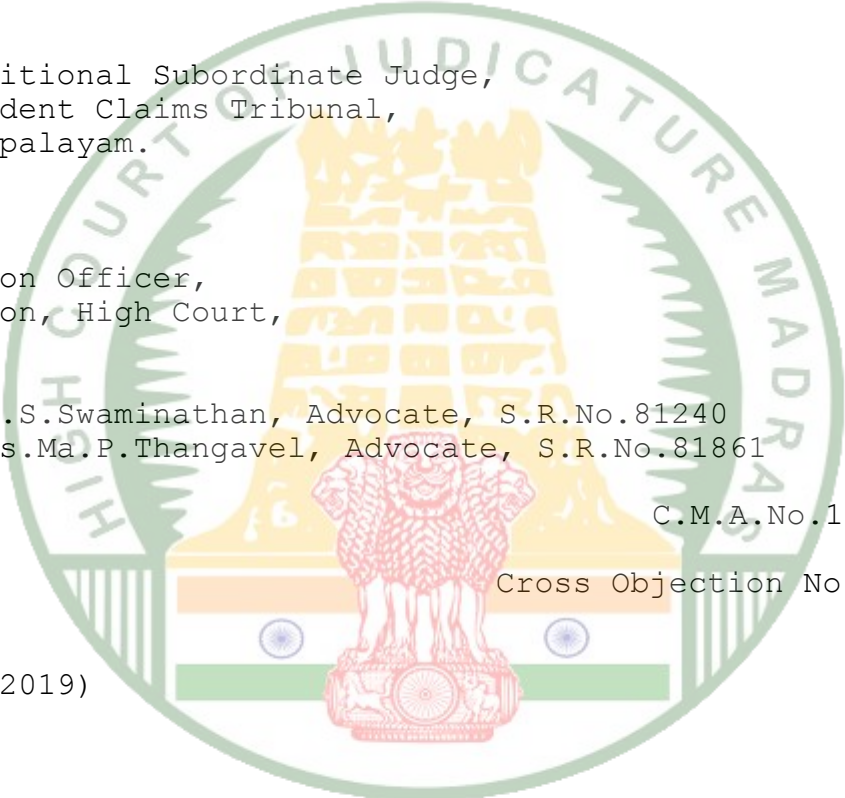
+1cc to Mr.S.Swaminathan, Advocate, S.R.No.81240

+1cc to M/s.Ma.P.Thangavel, Advocate, S.R.No.81861

C.M.A.No.1256 of 2011
and
Cross Objection No.17 of 2014

KS (CO)

RRS (03/07/2019)

The seal of the High Court of Madras is a circular emblem. It features a central yellow temple gopuram (tower) with a red lion standing in front of it. The lion is facing forward and is flanked by two smaller lions. The entire emblem is set against a green background with a white border. The words "HIGH COURT OF JUDICATURE MADRAS" are written in a circular path around the central emblem. Below the emblem, the Sanskrit motto "सत्यमेव जयते" (Satyameva Jayate) is written in Devanagari script.

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