

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 30.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.M.A.No.1946 of 2018
and
CMP.No.15009 of 2018

Tamil Nadu State Transport Corporation Limited,
Railway Station Road,
Kumbakonam Town & Taluk,
Thanjavur District. Appellant/Respondent

Vs

A.Mehalarani Respondent/Petitioner

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the decree and judgment dated 17.07.2017 passed in M.C.O.P.No.120 of 2014 by the Motor Accidents Claims Tribunal (Chief Judicial Magistrate), Nagapattinam.

For Appellant : Mr.D.Venkatachalam

JUDGMENT

Being aggrieved by the award of compensation of Rs.1,46,250/- for the injuries sustained by the respondent in the road traffic accident, the Tamil Nadu State Transport Corporation has filed this appeal.

2. Brief facts which are necessary for disposal of the appeal are as follows:

On 29.12.2012 at 3.30 P.M., the respondent, her husband, his husband's elder brother Selvaraj and his wife Selin Mary were travelling in a Tata Indica Manza car bearing registration

No.TN-51 H 7197 from Velanganni and when car was proceeding on Tanjore - Trichy road and at Vallam pirivu road, a bus bearing registration No.TN-68 N 0157 coming from Trichy to Tanjavur, driven by its driver in a rash and negligent manner dashed against the car. Due to the impact, persons travelled in the car sustained grievous injuries and the brother of the respondent died on the way to the hospital. In the accident, the petitioner sustained injuries on his hand and leg and also all over the body. Immediately after the accident, the respondent was admitted in Vinodhagan Memorial Hospital, Tanjavur. Regarding the accident, a criminal case in Crime No.513 of 2012 under Sections 279, 338 and 304A IPC was registered by Vallam Police Station, stating that the accident was due to the rash and negligent driving of the driver of the bus, the respondent filed the claim petition claiming compensation of Rs.3,00,000/- for the injury sustained by him.

3. Opposing the claim, the appellant - Transport Corporation filed counter stating that the driver of the bus driven the vehicle very carefully and due to the negligence of the driver of the Tata Indica car the accident occurred and therefore, the appellant is not liable to pay the compensation. The appellant also denied the age, occupation and income of the injured and stated that the claim made by the respondent is highly exorbitant.

4. Before the Tribunal, the respondent examined herself as P.W.1. Dr. R. Nagarajan was examined as P.W.2 and one V. Venkateswaran was examined as P.W.3 and Exs.P1 to P15 were marked. On the side of the appellant, the driver of the bus was examined as R.W.1 and no document was marked. The medical report of the Medical Board was marked as Ex.C1.

5. Rejecting the defence plea of the appellant, the Tribunal held that the accident was due to rash and negligent driving of the bus driver and held that the appellant Transport Corporation is liable to pay the compensation to the respondent. Observing that in the accident the respondent sustained head injuries and also lost her teeth, the Tribunal awarded total compensation of Rs.1,46,250/-.

6. Challenging the impugned award, the learned counsel for the appellant Transport Corporation submitted that the Tribunal ought not to have taken the permanent disability of respondent as 10% and in fact, the respondent had not sustained any fracture and she sustained only simple injuries. He would submit that for the loss of teeth, 10% disability is on the higher side. Since it is a case of simple injury, the Tribunal ought not have award compensation under the head pain and suffering, transport and nutritious diet. The amount awarded

under the head medical expenses is very high and thus prayed for setting aside the award.

7.I heard Mr.D.Venkatachalam, learned counsel for the appellant and perused the entire records.

8. It is to be noted that the appellant Transport Corporation has not questioned the negligence fastened on the driver of the bus. On the other hand, the appellant is challenging only the quantum of compensation awarded by the Tribunal. Therefore, it is not necessary to narrate the entire facts such as, as to how the accident had occurred and who is responsible for the accident and who is liable to pay compensation. It is for the reasons that the Tribunal has recorded findings on these facts in favour of the respondent. Secondly, as stated supra, the above aspects are not under serious challenge.

9. In the accident the respondent sustained injuries and also lost her teeth. After the accident, she was admitted in Vinodhagan Memorial Hospital, Tanjore and discharged on 09.1.2013. In her evidence, P.W.1 deposed that she had sustained fracture as also lost teeth in the accident. The respondent produced Ex.P2-discharge summary, where from it is seen that she was admitted on 29.12.2012 and discharged on 09.1.2013.

10. P.W.2-Doctor examined the respondent and issued Ex.P10-disability certificate assessing the disability at 35% for the loss of teeth. Since the appellant questioned the disability assessed by P.W.2, the respondent was referred to the Medical Board, which evaluated the disability as 10%. Ex.C1 is the medical report given by the Medical Board.

11. Taking the disability as 10%, the Tribunal awarded Rs.30,000/- towards disability. The learned counsel for the appellant contended that the Tribunal ought not to have taken the disability as 10% since the respondent had sustained only simple injury. Nothing has been produced by the appellant to show that the injury sustained by the respondent is simple in nature. Therefore, this Court is of the view that Rs.30,000/- awarded by the Tribunal under the head disability is reasonable and the same is maintained.

12. The Tribunal awarded Rs.20,000/- towards pain and suffering. Considering the nature of injury sustained by the

respondent and the period of treatment undergone by her, a sum of Rs.20,000/- awarded by the Tribunal towards pain and suffering is reasonable and the same warrants no interference.

13. The Tribunal awarded Rs.66,250/- towards medical expenses. On a perusal of the records, it is seen that the respondent had produced Ex.P8-medical bill to show that she had incurred expenditure of Rs.76,847/-. The respondent also produced Ex.P15-medial bill to show that she had incurred Rs.35,000/- for the replacement of teeth. Since the said amount has been mentioned in Ex.P8, the Tribunal has not taken into consideration Ex.P15. Moreover the Tribunal finds that in some of the bills, the name of the respondent was not found place and excluding those bills, the Tribunal has awarded Rs.66,250/- towards medical expenses. Since Rs.66,250/- awarded by the Tribunal under the head medical expenses is based on evidence, the same is confirmed.

14. By producing Ex.P13, the respondent contended that she had incurred Rs.40,000/- for transport and had also examined the driver of the car as P.W.3. Finding that the evidence of P.W.3 is partly trustworthy and the rest not acceptable, the Tribunal awarded a sum of Rs.20,000/- towards transport charges, which in my considered view is reasonable and the same is maintained.

15. The Tribunal awarded Rs.10,000/- towards extra-nourishment. The respondent was admitted on 29.12.2012 and discharged on 09.1.2013. Considering the period of treatment undergone by the respondent, the Tribunal was right in awarding Rs.10,000/- towards extra-nourishment. Thus, the total compensation of Rs.1,46,250/- awarded by the Tribunal for the injuries sustained by the respondent is reasonable and the same is confirmed. No valid grounds have been made out by the appellant to interfere with the award of the Tribunal and the appeal is liable to be dismissed.

16. In the result, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vs

To

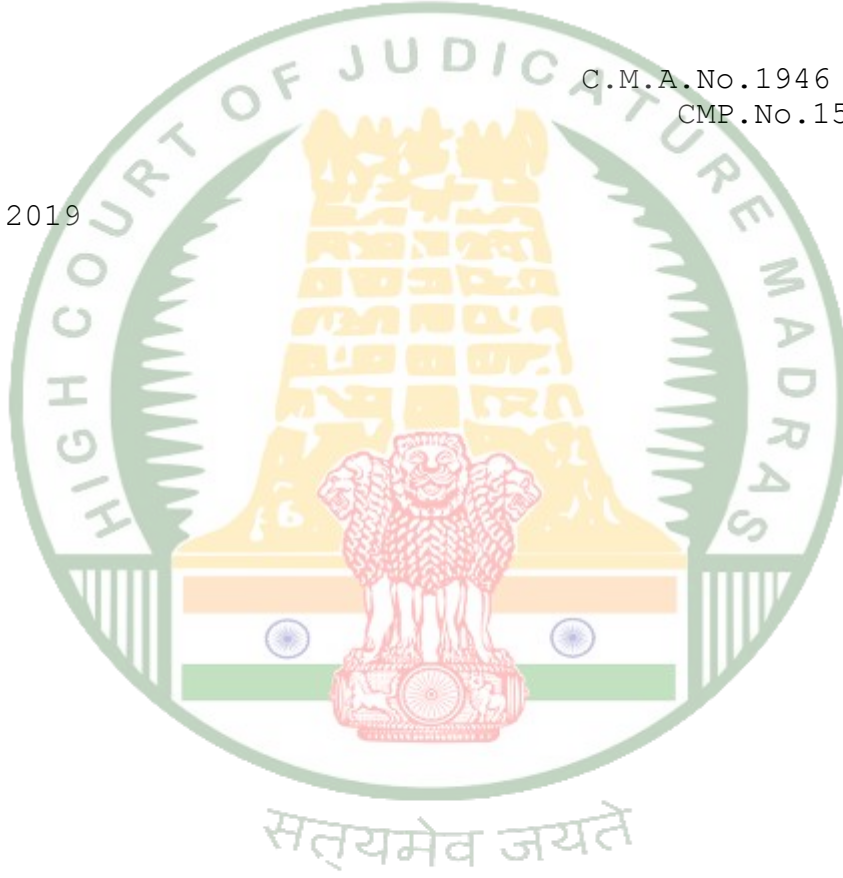
The Motor Accident Claims Tribunal,
Chief Judicial Magistrate,
Nagapattinam.

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V.R.Section, High Court, Madras.

+1 cc to Mr.D.Venkatachalam, Advocate Sr.No.60177
+1 cc to M/s.Sai & Bharath, Advocate Sr.No.59867

C.M.A.No.1946 of 2018 and
CMP.No.15009 of 2018

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