

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 24.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.M.A.No.3245 of 2017 and
CMP.No.20225 of 2017 and
CMP.No.13724 of 2018

Tamil Nadu State Transport Corporation (Vpm)
Rep. by its Managing Director,
Villupuram.Appellant/Respondent

Vs

G.NirmayaRespondent/Petitioner

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and decree dated 16.11.2016 made in M.C.O.P.No.5836 of 2015 on the file of the Motor Accident Claims Tribunal, II Small Causes Court, Chennai.

For Appellant : Mr.K.J.Sivakumar

For Respondent : M/s.M.Swamikkannu
Mrs.P.T.Saleem Fathima

JUDGMENT

The claimant/respondent herein as was riding her two wheeler on 14.07.2015 at Poonamallee High Road. At that time the bus bearing No.TN 23 N 2037 belonging to the transport corporation which was going ahead of the claimant, the Bus was stopped suddenly without any sign or indications and the conductor opened the door suddenly. Therefore the claimant dashed against the door and in due course she fell down and suffered injuries. The respondent has filed counter and contested the claim and pleaded that the accident did not take place due to the rash and negligent act of the driver of the bus.

2.The main point for consideration is whether the accident took place due to the negligent of the driver of the bus or not. The claimant has deposed as PW1 and marked documents Exs.P1 to P13 while on the side of the Transport corporation the driver of

the bus was examined on RW1 and no documents were marked. The F.I.R. is registered against the driver of the bus. The claimant has admitted to hospital and took treatment. The driver of the bus deposed as RW1 and stated that the accident happened due to the rash and negligent driving of the claimant. However no eye witness such as any passengers of the Bus were not examined to support RW1 evidence. Thus the tribunal found that the accident occurred only due to the rash and negligent driving of the driver of the bus and it is found reasonable.

3. On the question of quantum the claimant took treatment at various hospitals and has filed Exs.P2 to P7. As per Ex.P2 Discharge summary she was admitted on 18.07.2015 and discharged on 19.07.2015 at Sri Devi Speciality Hospital, Chennai. The claimant has suffered a non-union fracture coccyx one spine. She has marked documents Exs.P5 to P7, P2, P10 and P11 to show that she had sustained injury and had taken treatment. The doctor PW2 had deposed and marked Ex.P12 disability certificate. He had stated that the claimant has difficulty in defecation and pain, and not able to sit and travel due to spine pain and difficulty in having family life. The PW2 has given 30% disablement for restricted spine movement and restricted knee movement 30% totally 60%. The claimant was working in Maalee Education Private Ltd, Kan Business Centre as student centre and earning Rs.20,000/- per month. She has produced P4 to prove the same but taking into consideration various documents the tribunal fixed functional disability at 30%. The claimant was 34 years old at the time of accident and hence the tribunal took 16 multiplier. Further since no documents were produced to prove the income the tribunal fixed the income at Rs.8,000/- per month.

4. Now based on the above assumptions the tribunal awarded a sum of Rs.50,000/- on the head of transport, nourishing food, damage to clothes and articles and miscellaneous expenditure. However the tribunal has not given a clear reason for arriving at the above said sum. A sum of Rs.30,000/ would suffice under the head. The claimant has produced medical bills P11 for a sum of Rs.3,784/- and thus awarded a sum of Rs.4,000/- which is reasonable.

5. The tribunal has considered the disability certificate Ex.P12 and found that the claimant has difficulty in defecation and sitting. She needs further treatment in future. The tribunal has rightly awarded Rs.10,000/-. As for the attender charges the tribunal has awarded a sum of Rs.2,000/- which is on the higher side a sum of Rs.10,000/- under the head will be reasonable. The tribunal has awarded a sum of Rs.50,000/- for pain and suffering while a sum of Rs.30,000/- will be sufficient under the head.

6. Under the head of loss of earning capacity tribunal has fixed the 16 multiplier and arrived at Rs.4,60,800/- (The tribunal has taken Rs.8,000/- as monthly income as discussed above). This seems to be reasonable. The tribunal has further awarded a sum of Rs.24,000/- for loss of earning dues period of treatment which is also reasonable finally the tribunal has awarded a sum of Rs.25,000/- for which no reason has been given by the tribunal. A sum of Rs.15,000/- would be sufficient to the above said head. Thus the following is arrived at and modified as hereunder:

1. Transportation, Nourish food and Miscellaneous expenditure	Rs. 30,000
2. Medical expenses	Rs. 4,000
3. Future medical expenses	Rs. 10,000
4. Attender charges	Rs. 10,000
5. Damages for pain and suffering and trauma	Rs. 30,000
6. Loss of earning capacity	Rs.4,60,800
7. Loss of earning during the period of the treatment	Rs. 24,000
8. Loss of amenity	Rs. 15,000
Total	Rs.5,83,800

7. In the result, this Civil Miscellaneous Appeal filed by the Transport Corporation is partly allowed. The appellant shall be liable to pay the above said sum of Rs.5,83,800/- to the claimant with interest at the rate of 7.5% p.a. from the date of petition to till the date of deposit. The award of the Tribunal in MCOP.No.5836 of 2015 dated 16.11.2016 on the file of MACT, SCC-II, Chennai shall be deposited within a period of six weeks from the date of receipt of a copy of this order. Upon such deposit, the respondent claimant is permitted to withdraw the same by filing necessary application before the Tribunal. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

vs

To

1. The Motor Accident Claims Tribunal,
II Small Causes Court, Chennai.

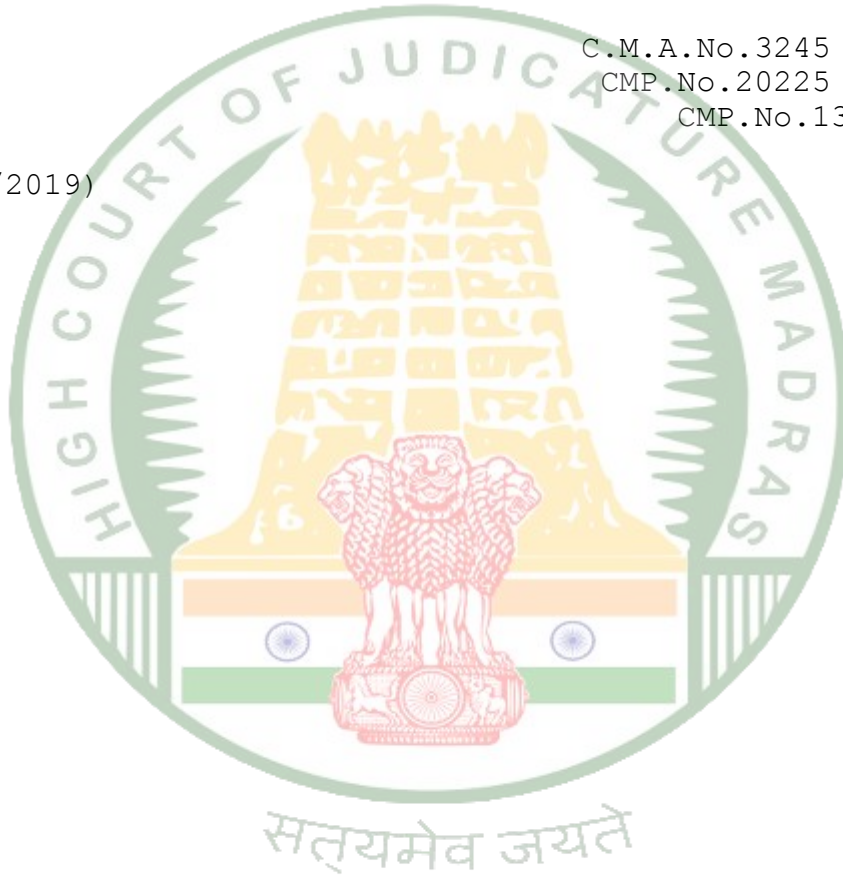
2. The Section Officer,
V.R. Section,
High Court, Madras.

+1 cc to Mr.K.J.Sivakumar, Advocate, S.R.No.58087

+1 cc to Mr.M.Swamikkannu, Advocate, S.R.No.57860

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SSM(05/03/2019)



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