

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	08.12.2017
Pronounced on	17.04.2018

C O R A M

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.No.1370 of 2008

The Managing Director,
Tamilnadu State Transport
Corporation Ltd., Division I,
No.37, Mettupalayam Road,
Coimbatore

...Appellant/Respondent

Vs

Sureshkannan alias Suresh ...Respondent/Petitioner

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against award made in MCOP.No.1011 of 2002 dated 12.1.2007 on the file of the Motor Vehicles Accident Claims Tribunal Fast Track Court IV at Tiruppur.

For Appellant : Mr.S.V.Vasanthakumar

For Respondents : Mr. Ma.P.Thangavel

JUDGMENT

This Civil Miscellaneous Appeal has been preferred by the appellant herein who is the Managing Director of Tamilnadu State Transport Corporation Limited against the award made in MCOP.No.1011 of 2002 on the file of the Motor Vehicles Accident Claims Tribunal Fast Track Court IV at Tiruppur disputing the negligence and quantum of compensation awarded.

2.The brief facts of the claim petition is as follows;

(i) On 23.4.2002 at 9.00 p.m., when the claimant was proceeding in his two wheeler bearing Registration No.TN 39 Q 4116 from south to north direction in Tirupur to Palladam Main Road, near Vidyalayam, Tiruppur, a bus belonging to Appellant Transport Corporation, bearing Registration No.TN-37-N-0555, driven by its driver in a rash and negligent manner, hit against the claimant, due to which, the claimant sustained fracture on left hand and also multiple injuries all over his body. The claimant

was immediately admitted in Government Hospital, Tiruppur and for further treatment, he was admitted in CMC Hospital as inpatient.

(ii) The claimant was employed as a Supervisor in Pappulor Checking Centre Vidyalayam, Tiruppur and was earning Rs.4000 per month.

(iii) A claim petition was filed before the Motor Vehicles Accident Claims Tribunal Fast Track Court IV at Tiruppur by the injured claiming compensation of Rs.5,00,000/-.

(iv) Resisting the same, the Transport Corporation has filed a

detailed counter disputing the negligence, age, avocation, income of the injured and manner of the accident

(v) On the side of the claimant, he examined himself as PW1, Dr. Senthilkumar as PW2 and one Dhayalan as PW3 and marked documents Ex.P.1 to Ex.P.7. On the side of the respondent corporation, neither a witness was examined, nor a document was marked.

(vi) The tribunal, after analysing the evidence and documents placed before it on either side, with regard to the nature of the injuries sustained by the claimant, the impact of injury, disability sustained, occupation and the loss of income, has awarded a sum of Rs.2,18,300/- as total compensation under various heads and the details of which are tabulated hereunder;

Permanent disability and future loss of earning	Rs.1,95,800/-
Pain and sufferings and loss of income during treatment	Rs.20,000/-
Transportation expenses	Rs.1,500/-
Damages	Rs.100
	0/-
Total	Rs.2,18,300/-

3. Aggrieved against the award passed by the tribunal, the respondent Transport Corporation, as appellant, has preferred the present Civil Miscellaneous Appeal on the following grounds;

- (i) it is only the claimant who invited the accident by his rash and negligent driving;
- (ii) the owner of the TVS Moped was not added as a party;
- (iii) for the disability sustained, the tribunal has erroneously applied the multiplier method and the compensation has been calculated in the absence of any

proof of age and income.

4. Thus in total, it is contended that the total compensation awarded by the tribunal at Rs.2,18,300/- under various heads is highly excessive and the same warrants interference by this Court and therefore, the appellant prayed for reduction of the Award amount.

5. Considered the rival submissions made on both sides and perused the materials available on record.

6. On a perusal of Ex.P.4- FIR it is seen that a case has been registered against the driver of the bus alone and nothing has been mentioned that the accident has occurred only due to the

negligence on the part the claimant. Further, the appellant Transport Corporation has not filed any contradictory evidence to prove that the accident has occurred only due to the negligence on the part of the claimant. In the absence of any contradictory evidence on the side of the appellant Transport Corporation, the tribunal has rightly fixed the liability on the part of the driver of appellant transport corporation for the occurrence of the accident.

7. The only grievance of the appellant herein is that in the absence of sufficient documents filed before it, the tribunal has considered the disability at 32% and applied the multiplier of 17 and awarded a huge sum of Rs.1,95,800/- towards permanent disability and future loss of income.

8. On a perusal of Ex.P.1-Accident Register, the claimant/respondent sustained fracture injury on his left shoulder and multiple injuries all over his body. On the side of the claimant, he examined PW2- Dr. Senthilkumar, who deposed before the Tribunal that there is a fracture in scapula and clavicle bones in his left shoulder and the nerves of the left hand have also got injured and for that, surgery was done to the claimant and due to the impact of the injury sustained, the claimant is unable to lift any object and even he finds it difficult to do his routine avocation. Further, because of the fracture in the ribs, he feels pain. PW2 assessed permanent disability at 39.3% and issued disability certificate Ex.P.5. Though the Doctor assessed the disability at 39.3%, the tribunal took the same as 32% and by adopting multiplier method of 17, it awarded Rs.1,95,800/- towards permanent disability and future loss of income. Therefore this Court does not find any exaggeration in the amount awarded by the tribunal under the above head and the same deserves to be confirmed.

9.The avocation of the claimant was also proved by Ex.P.7 which is the copy of the current account book of the Popular checking centre, where the claimant was employed as a Supervisor and was earning Rs.4000/- per month. The age of the claimant was also observed as 24 by perusing Ex.P.3-details of treatment report.

10. Perusal of the award would reveal that the tribunal has also considered the nature of injury i.e., three fracture injuries and the period of treatment underwent , i.e., 8 months, has rightly awarded Rs.20,000/- under the head pain and sufferings and loss of earning during treatment period. It has also awarded Rs.15,000/- for transport expenses considering the treatment

period and Rs.1000/- for the damages of articles, which according to this Court are quite appropriate and reasonable.

11. Thus this Court is of the view that in no way, the tribunal has awarded exorbitant amount under any head. Hence the award passed by the tribunal is appropriate and reasonable one and the same does not require any interference by this Court.

12. In the result,

(i) the Civil Miscellaneous Appeal is dismissed.

(ii) The Award and judgment passed by the Tribunal in MCOP.No.1011 of 2002 is hereby confirmed.

(iii) the Appellant Transport Corporation is directed to deposit the compensation amount, less the amount, if any, already deposited within a period of eight weeks from the date of receipt of a copy of this order.

(iv) On such deposit, the claimant/respondent is permitted to withdraw the same on making appropriate application. The connected M.P.No.1 of 2008 is closed. No costs.

Sd/-
Assistant Registrar(CS V)

//True copy//

Sub Assistant Registrar

msr

To

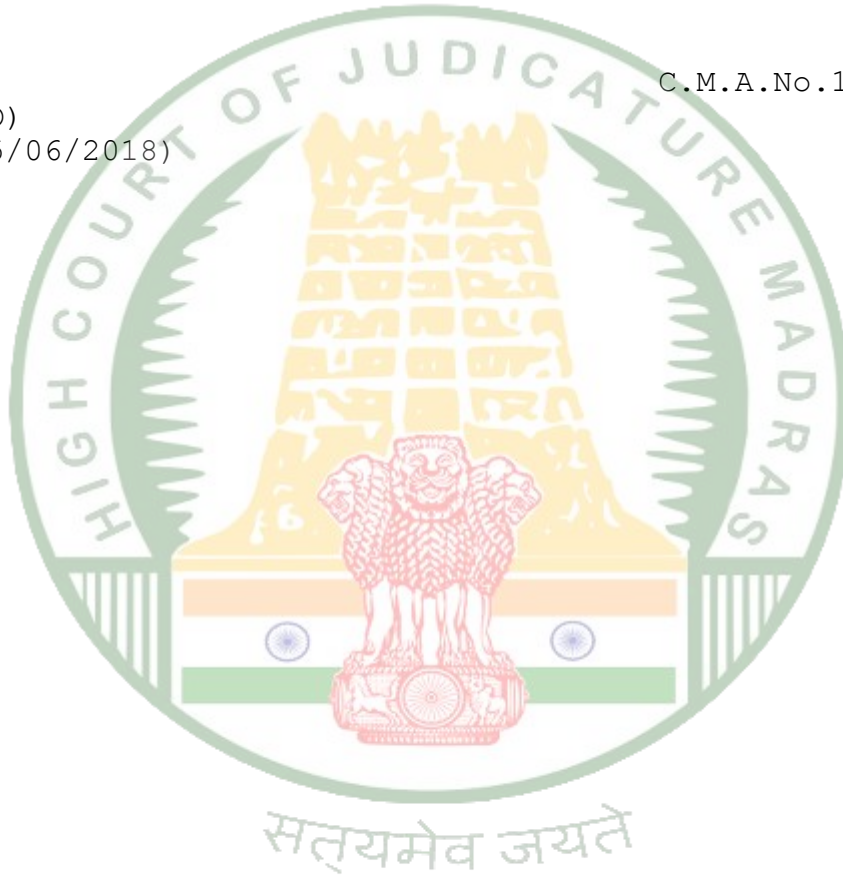
1.Motor Vehicles Accident Claims Tribunal Fast Track Court IV
Tiruppur.

2 The Record Keeper,
V.R.Section, High Court, Madras.

+lcc to Mr.Ma.Pa.Thangavel, Advocate SR.No.28675

RK (CO)
GN(05/06/2018)

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