

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.09.2018

CORAM

The Honourable MRS JUSTICE S.RAMATHILAGAM

CMA.No.1136 of 2003

A.Ramamsamy

..Appellant

.. Vs..

1.C.K.Dhamotharan

2.Tamil Nadu Transport Corporation Ltd.,
rep.by its Managing Director,
Chennimalai Road,
Erode.

.... Respondents

Appeal filed under section 177 (1) of Motor Vehicles Act,
to set aside the award passed by the Principal District Judge,
Erode in MCOP No.341/1998 on 27.10.2000.

For Appellant : Mr.A.N.Viswanatha Rao

For Respondents : Mr.V.Udayakumar for R 2
Given up for R 1

JUDGMENT

The Civil Miscellaneous Appeal has been preferred by
the claimants against the award passed in M.C.O.P.No.341 of 1998
by the Principle District Judge, Erode on 27.10.2000.

2.The brief facts leading to the claim application are
as follows:

On 12.06.1997 at about 2.30 p.m., when the claimant
was riding his Motor Cycle bearing registration number TN 33C
4316 from Kavindapadi to Erode Main Road near Rettai Vaikkal,
the bus belonging to the second respondent - Transport
Corporation bearing registration number TN 33 N 0215 suddenly
stopped by applying break, in the result, the said vehicle hit
against the petitioner and caused the accident. The Kavindapadi
Police Station has also registered a case in Cr.No.335 of 1997
against the first respondent, who is the driver of the bus. The
claimant has also claimed compensation of Rs. 7 lakhs. The
Tribunal after assessing the evidence and documents placed
before it, has awarded a sum of Rs.25,000/- as compensation.

Aggrieved against the said award, the claimant has preferred this appeal.

3.The Tribunal has given finding that the petitioner/appellant has not followed the traffic rules by keeping a considerable distance from the ongoing bus. The judgment by the Criminal Court was also marked before the Tribunal as Ex.B-1 on the respondent side. The Tribunal has observed that since the petitioner has not followed the traffic rules, he sustained injuries which resulted permanent disability. Hence, the Tribunal has awarded compensation of a sum of Rs.25,000/.

4.The petitioner who is the appellant herein has argued that it is because of the negligent act of the bus driver who applied sudden break, the accident occurred and there is no fault on the side of the petitioner. It is also argued by the appellant that the First Information was not given by the appellant and it was given only by the driver of the bus, and therefore, it is obvious that the driver was disowning his liability for the accident. But, the said fact was not considered by the Tribunal.

5.Heard the arguments advanced by both sides and also perused the records.

6.On a perusal of records, it is seen that the claimant while he was admitted in the hospital has stated that while he was proceeding in Kavindapadi to Erode Main Road near Rettai Vaikkal, at that time the first respondent was driving the bus bearing registration number TN 33 N 0215, ahead of him and applied sudden break, resulting which, the petitioner's vehicle hit the back side of the bus and sustained injuries and the petitioner's vehicle also got damaged. FIR was also registered against the driver of the said bus, and the Charge Sheet was also filed against the driver of the bus. Though, the finding of the Criminal Court is not binding, from a perusal of the records, it is very much observed that even as per the own evidence of the claimant and also the place of occurrence as per the Rough Sketch and the Charge Sheet filed against the driver, the petitioner cannot be held to be negligent by not observing the traffic rules. Hence, in that aspect, the petitioner who sustained such grievous injury and sustained disability because of that accident, cannot be denied proper compensation by the Tribunal.

7.The learned counsel for the appellant/claimant also relied on the judgment in Bimla Devi and Others .Vs. Himachal Road Transport Corporation and Others reported in 2009 1 TN MAC 700 (SC). The relevant portion of the said judgment reads as

follows:

case law : [Standard of proof beyond reasonable doubt not applicable]

"claimant though might not be aware of details as to how accident took place, FIR lodged in relation to accident cannot be ignored".

8.Hence, this Court is of the view that it is just and proper to assess the compensation in view of the details furnished by the Claimant with regard to his age, occupation and income. By taking into consideration, his age, it is observed from the documents that the age of the Claimant was 50 years and he was working as an Electrical Contractor. But, no proof was filed for his occupation and income. However by considering the fact that a person of that age could earn some income, hence the loss of earning is fixed at Rs.15,000/- .

9.Accordingly, by considering the records produced by the appellant to substantiate his claim, this Court inclined to award some amount under various heads as follows:

1	Loss of Earnings	Rs.15,000/--
2	Transport	Rs. 5,000/-
3	Extra Nourishment	Rs. 5,000/-
4	Damage to Clothing and motorcycle	Rs. 2,000/-
5	Attender Charges	Rs. 5,000/-
6	Medical Expenses as per Ex.A-8	Rs.91,534/-
7	Pain and suffering	Rs.50,000/-
8	Loss of Amenities	Rs.25,000/-
9	Permanent Disability	Rs.60,000/-
	Total=	Rs.2,58,534/- -----

10. In view of the above, this Civil Miscellaneous Appeal is partly allowed. There shall be no order as to costs. The 2nd respondent/Transport Corporation is claimed to deposit the modified amount along with interest at 7.5% per annum, to the credit of MCOP No.341/1998, dated 27.10.2000, on the file of the Principal District Judge, Erode, less the amount already

deposited within a period of two weeks from the date of receipt of a copy of this order. On such deposit, the Tribunal is directed to transfer the amount to the Claimant's Bank account through RTGS, within a period of one week thereon.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

KP

To

1.The Principal District Judge,
Erode.

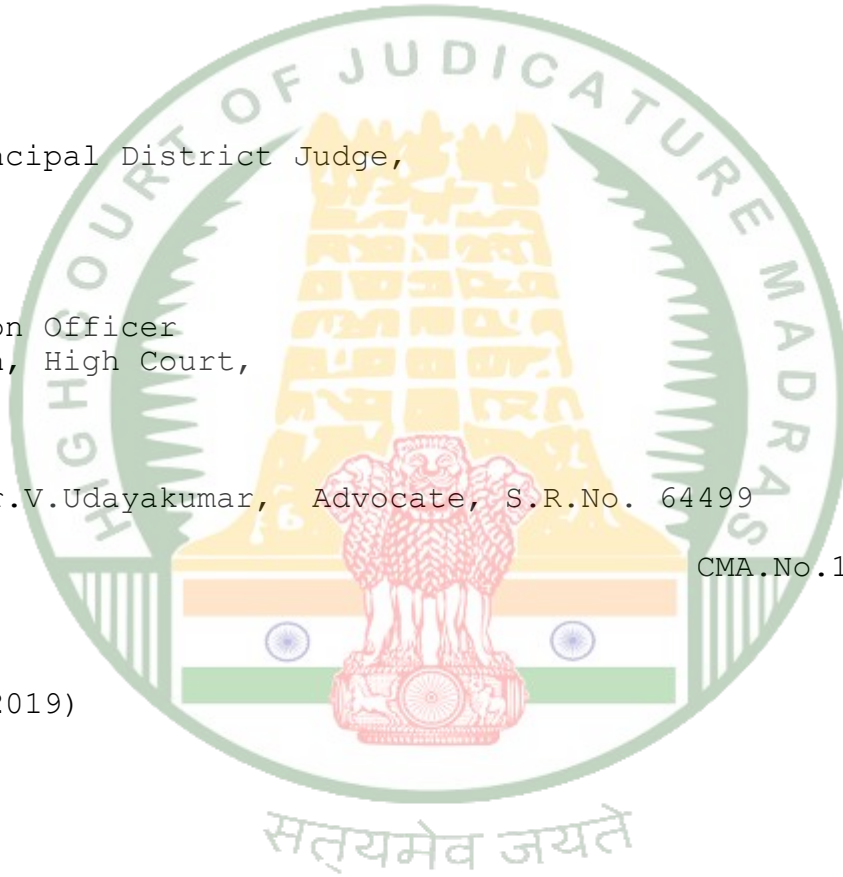
Copy to:-

The Section Officer
VR Section, High Court,
Chennai.

+1cc to Mr.V.Udayakumar, Advocate, S.R.No. 64499

CMA.No.1136 of 2003

GJ(CO)
GN(26/04/2019)



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