

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.3074 of 2010

and M.P.No.1 of 2010

The Managing Director,
Tamil Nadu State Transport Corporation
Division I, 37 Mettupalayam Road,
Coimbatore-43.

... Appellant/2nd Respondent

Vs

1.M.Manivel ...1st Respondent/Petitioner

2.K.Murugesan ...2nd Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award & decree made in MCOP No.834 of 2005 dated 3.02.2009 on the file of the Motor Vehicles Accident Claims Tribunal/Addl. District Judge F.T.C.No.V Coimbatore at Trippur.

For Appellant : Mr.K.J.Siva Kumar
For Respondents : R1 - No Appearance
R2 - Given up

J U D G M E N T

The instant appeal has been filed by the Appellant Transport Corporation challenging the Award dated 03.02.2009, passed by the Motor Vehicles Accident Claims Tribunal, (Addl. District Judge) F.T.C.No.V Coimbatore at Trippur in M.C.O.P.No.834 of 2005.

2.The brief facts leading to the filing of the instant appeal are as follows:

(i)The first respondent sustained injuries on 01.07.2005 as a result of an accident caused by a bus bearing Registration No.TN 38 N 0027 owned by the appellant Transport Corporation.

(ii)The first respondent preferred a claim before the Motor Vehicles Accident Claims Tribunal in MCOP.No.834 of 2005, seeking a compensation of Rs.10,00,000 /-.

(iii)The Motor Accident Claims Tribunal by its Award dated 03.02.2009, passed in MCOP No.834 of 2005, directed the Appellant to pay the first respondent a sum of Rs.6,48,700/- together with interest at the rate of 7.5 % per annum from the

date of claim till the date of realization.

3. Aggrieved by the Award dated 03.02.2009, passed by the Motor Vehicles Accident Claims Tribunal in MCOP.No.834 of 2005, the instant appeal has been filed by the Appellant Transport Corporation.

4. Heard, Mr.K.J.Siva kumar, learned Counsel for the Appellant. The name of the counsel for the first respondent is printed in the cause list today. Despite his name being printed, there is no representation on the side of the first respondent.

5. According to the learned Counsel for the Appellant, the Tribunal under the impugned Award has erroneously awarded Rs.4,59,000/- for 60% disability by taking 17 multiplier and also erroneously awarded another sum of Rs.50,000/- towards loss of amenities. According to the learned Counsel for the Appellant, the Tribunal ought not to have applied the multiplier method while assessing the compensation.

6. This Court after having considered the materials available on record and after examining the impugned Award and after hearing the submission of the learned Counsel for the Appellant observes the following:

(a) The first respondent was a gas cylinder delivery boy and his age was 24 years at the time of the accident. In his claim petition he has disclosed that he was earning a monthly salary of Rs.4,500/- at the time of the accident.

(b) The Tribunal has also assessed the monthly income of the first respondent under the impugned Award at Rs.4,500/-. The first respondent sustained grievous injuries which resulted in amputation of his right leg. He produced a disability certificate before the Tribunal which was marked as Ex.A-7 and the said disability certificate confirms that the first respondent has suffered 60% disability. The injuries sustained by the first respondent has not been disputed by the Appellant before the Tribunal.

(c) There is a clear finding given by the Tribunal that only due to the rash and negligent driving by the driver of the bus owned by the Appellant, the accident has happened.

(d) The first respondent was a gas cylinder delivery boy at the time of the accident. As a gas cylinder delivery boy, the amputation of his right leg, would have certainly resulted in loss of earning due to his immobility.

7.Considering the nature of avocation of the first respondent, the Tribunal has rightly applied the multiplier method while awarding the compensation in favour of the first respondent. But the Tribunal erroneously granted apart from a sum of Rs.4,59,000/- towards 60% disability by adopting 17 multiplier has also awarded another sum of Rs.50,000/- towards loss of amenities, which will certainly amount to double compensation under the same head. But the Tribunal has not awarded any compensation towards loss of earning, the Tribunal has granted inadequate compensation towards loss of earning and has granted only a sum of Rs.5,000/- towards other heads.

8.In the considered view of this Court, considering the nature of the injuries sustained by the first respondent, which resulted in amputation of his right leg, the Tribunal ought to have awarded higher compensation towards loss of earning instead of granting Rs.50,000/- towards loss of amenities.

9.In the considered view of this Court, a sum of Rs.50,000/- awarded by the Tribunal under the head loss of amenities has to be adjusted towards compensation for loss of earning capacity in addition to the sum of Rs.5,000/- already granted by the Tribunal under the impugned Award.

10.Considering the over all facts and circumstances of the case, this Court is of the considered view that the compensation awarded to the first respondent under the impugned Award is a just compensation.

11.In the result, there is no merit in the instant appeal. Accordingly, the Appeal shall stand dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed. The Appellant is directed to deposit the amount awarded by the Tribunal together with interest at the rate of 7.5 % per annum from the date of claim till the date of realization after deducting the amount already deposited, if any, to the credit of MCOP No.834 of 2005 on the file of the Motor Vehicles Accident Claims Tribunal Addl. District Judge F.T.C.No.V Coimbatore at Triuppur, within a period of four weeks from the date of receipt of this order. On such deposit being made, the first respondent is permitted to withdraw the said sum by filing an appropriate application.

kyl/pam

Sd/-

Assistant Registrar(CS VIII)

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Sub Assistant Registrar

To

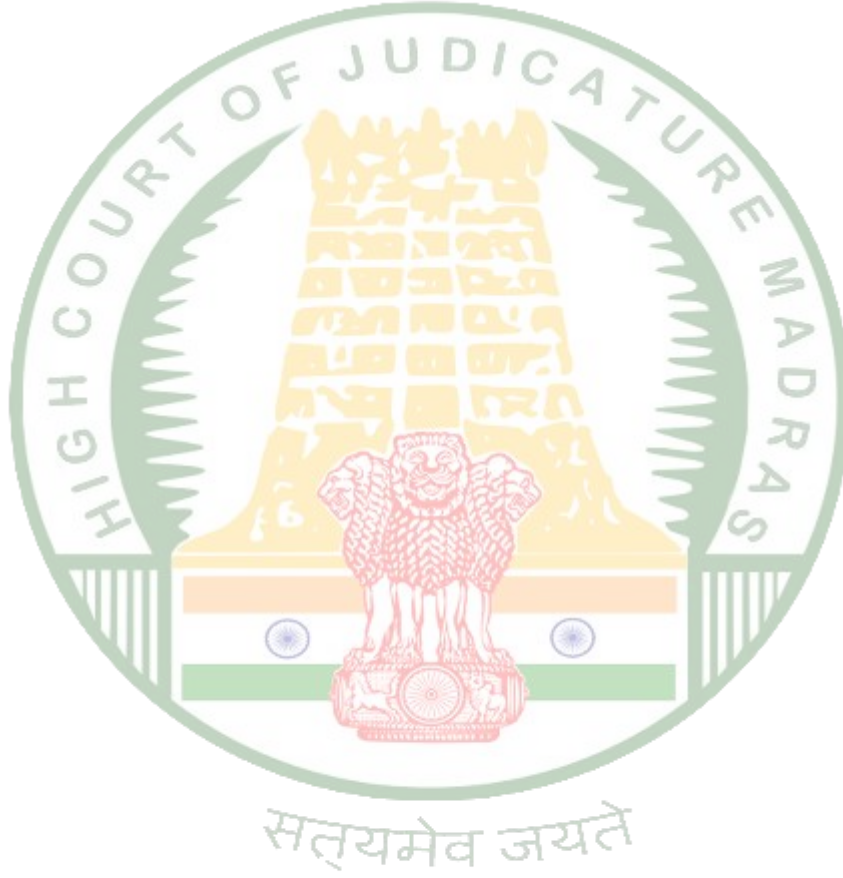
1.The Motor Accident Claims Tribunal,
Addl. District Judge Fast Track Court No.V
Coimbatore at Triuppur

+1cc to MR.K.J.Sivakumar, Advocate SR.NO.62512

GJII(CO)

sm:22.10.2018

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