

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.08.2018

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.2890 of 2008

&

M.P.No.1 of 2008

The Managing Director,
Tamilnadu State Transport Corporation Ltd.,
Division-II,
Chennimalai Road,
Erode.

... Appellant

..Vs..

Balachandiran

...Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Decree and judgment in M.A.C.T.O.P.No.939 of 2004 dated 11.10.2007 on the file of the Motor Accident Claims Tribunal(Fast Track Court No.4), Coimbatore.

For Appellant : Mr.N.Anand
For Respondent : No appearance

J U D G M E N T

The instant appeal has been filed challenging the award dated 11.10.2007 passed by the Motor Accident Claims Tribunal, (Fast Track Court No.4), Coimbatore, sitting at Tirupur in MCOP.No.939 of 2004.

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

2. The respondent sustained injuries as a result of an accident that took place on 09.11.2003 caused by a bus bearing registration No.TN33 N 1009 owned by the Appellant Transport corporation. The respondent preferred a compensation claim before the Motor Accident Claim Tribunal, (Fast Track Court-IV), Coimbatore in MCOP.No.939 of 2004 seeking a compensation of Rs.15,03,000/- which was restricted to Rs.10,00,000/- against the Appellant/Transport Corporation. The Motor Accident Claim Tribunal, (Fast Track Court-IV), Coimbatore

by its Award dated 11.10.2007 passed in MCOP.No. 939 of 2004, directed the Appellant to pay the respondent a sum of Rs.4,34,300/- together with interest at the rate of 7.5% per annum from the date of claim till the date of realization and also awarded Advocate fees at Rs.11,343/-.

3. Aggrieved by the award dated 11.10.2007 in M.C.O.P.No.939 of 2004, the instant appeal has been filed by the Appellant/Transport Corporation.

4. Heard Mr.N.Anand, learned counsel for the Appellant. Despite service of notice on the respondent and the name having been printed in the cause list today, none appears on behalf of the respondent.

5. According to the learned counsel for the Appellant, the Tribunal has erroneously awarded a sum of Rs.2,30,400/- towards loss of earning for 30% disability, Rs.10,000/- towards pain and suffering, Rs.3000/- towards extra nourishment charges, Rs.2000/- for transportation, Rs.15,000/- for loss of income during the treatment period and Rs.1,73,900/- towards medical expenses without any basis. According to the learned counsel for the Appellant, the Tribunal has failed to consider the age of the respondent/claimant while applying multiplier and the Tribunal ought to have adopted lesser multiplier as per the rulings of the Hon'ble Apex Court.

6. This Court after having considered the materials available on record and after having examined the impugned award and after hearing the submissions of the respective counsels, observes the following:

a) It is an undisputed fact that the respondent was a tailor aged 20 years at the time of the accident. No contra evidence has been produced by the Appellant before the Tribunal to disprove the age of the respondent or his avocation.

b) The injuries sustained by the respondent is also not disputed by the Appellant. As a result of the accident, the respondent has sustained haemothorax at right side chest with collapse of lung and fracture at clavicle and he was admitted in hospital from 09.11.2003 to 16.11.2003 and thereafter, he was readmitted upto 22.12.2003.

c) The notional income fixed by the Tribunal for the respondent was Rs.4,000 per month. Considering the fact that the respondent is a tailor, notional income fixed by the Tribunal is a reasonable sum.

d) The respondent has suffered 30% disability which was also not disputed by the Appellant and the disability certificate Ex.A.10 was also filed by the respondent before the Tribunal. No contra evidence has been produced by the Appellant to disprove the percentage of disability sustained by the respondent. Even though, as per Sarla Verma's case reported in

2009 (2) TNMAC 1 (SC) the correct multiplier that should have been adopted by the Tribunal for a person aged 20 years is 18, The Tribunal adopted only 16 multiplier. If 18 multiplier is adopted, the respondent would have got a higher compensation.

e) The Tribunal has awarded Rs.10,000 for pain and suffering, Rs.3,000/- for extra nourishment, Rs.2,000/- for transport expenses and Rs.15,000/- for loss of income during the treatment period. The compensation awarded by the Tribunal under these heads are reasonable in the considered view of this court.

f) The respondent has produced the medical bills for a sum of Rs.1,73,900/-, before the Tribunal which was marked Ex.A6 and the Tribunal has also awarded Rs.1,73,900/- for reimbursement of medical expenses. No contra evidence was produced by the Appellant before the Tribunal to disprove the claim of Rs.1,73,900/- towards medical expenses.

7. In view of the above observations, this Court is of the considered view that there is no merit in the instant appeal. Accordingly, the Appeal is dismissed.

8. Accordingly, the Appellant is directed to deposit the Award amount awarded by the Tribunal along with interest from the date of claim till the date of realisation to the credit of MCOP. No.939 of 2004 on the file of the Motor Accident Claims Tribunal(Fast Track Court No.4), Coimbatore, after deducting the amount that has already been deposited by them within a period of four weeks from the date of receipt of a copy of this Order. On such deposit being made, the respondent is permitted to withdraw the amount lying to the credit of MCOP.No.939 of 2004 on the file of the Motor Accident Claims Tribunal(Fast Track Court No.4), Coimbatore with accrued interest by filing an appropriate application. Consequently, connected miscellaneous petition is closed. However, there shall be no order as to costs.

s/d-

Assistant Registrar(CS-V)

True Copy

Sub-Assistant Registrar

kyl/nl

To

1.The Motor Accident Claims Tribunal,
(Fast Track Court No.4), Coimbatore

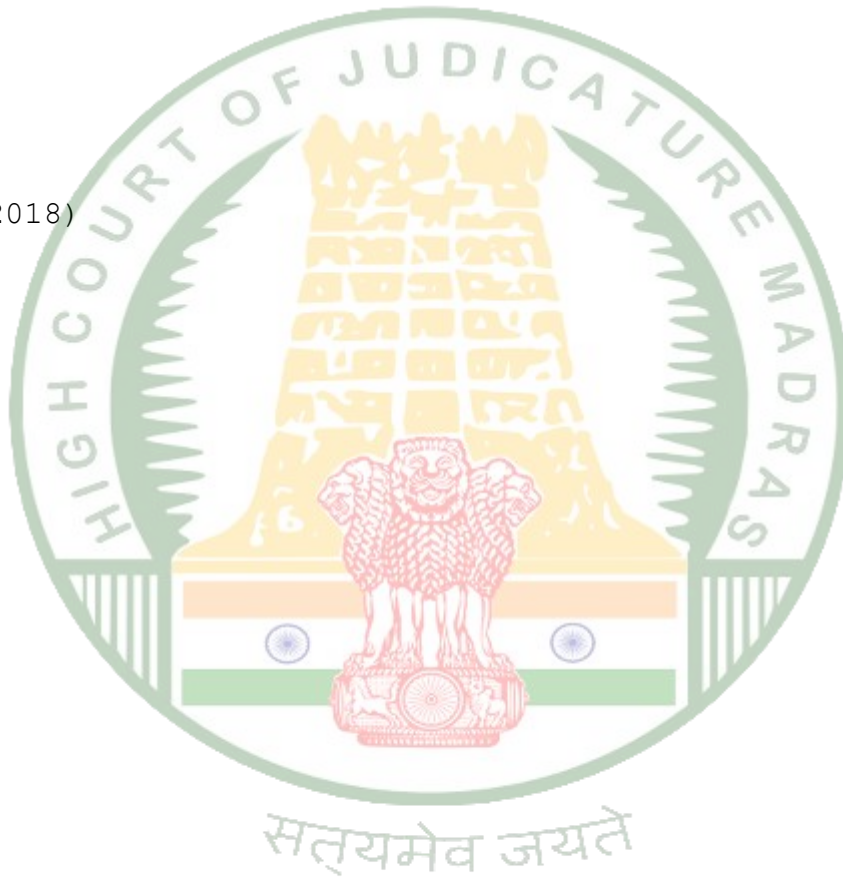
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2. The Section officer
VR Section,
High Court, Madras.

+1 CC to Mr.N. Anand, Advocate sr 60085.
+1 CC to M/s. Ra. Srividhya, Advocate sr 60289.

C.M.A.No.2890 of 2008

SPD(CO)
SP(25/09/2018)



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