

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2775 of 2018

and

C.M.P.No.21140 of 2018

The Managing Director
Tamil Nadu State
Transport Corporation,
Salem Division - I,
No.12, Ramakrishna Road,
Salem - 7.

... Appellant/Respondent

Vs.

A.Nandagopal

... Respondent/Claimant

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, against the judgment and decree dated 09.07.2014 made in M.C.O.P.No.2005 of 2011 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Cuddalore.

For Appellant : Mr.D.Venkatachalam

JUDGMENT

The Civil Miscellaneous Appeal is filed against the award dated 09.07.2014 made in M.C.O.P.No.2005 of 2011 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Cuddalore.

2.The appellant is respondent and the respondent is claimant in M.C.O.P.No.2005 of 2011 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Cuddalore. The respondent filed the said M.C.O.P. claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in the accident that occurred on 31.05.2011.

3.According to the respondent, on 31.05.2011, while he was riding his motorcycle bearing registration No.TN-22-AQ-1608, on the extreme left hand side of the Salem main road, near Periya Mampattu Colony, the driver of the bus bearing registration

No.TN-30-N-0824, belonging to the appellant Transport Corporation, who drove the bus in a rash and negligent manner, dashed against the respondent and caused the accident. Due to the said impact, the respondent sustained grievous and multiple fractures all over his body and head. According to the respondent, the accident had occurred only due to the rash and negligent driving by the driver of the bus belonging to the appellant. At the time of accident, the respondent was a Cashew nut, Teak & Flower Plant Merchant and earning a sum of Rs.25,000/- per month and the respondent is the only breadwinner of his family and after the accident, he is unable to do the work.

4. The appellant/Transport Corporation filed counter statement and denied all the averments made by the respondent. According to the appellant, the driver of the bus stopped the bus on seeing that the respondent was driving his motorcycle in a rash and negligent manner. The respondent came and dashed against the backside of the bus, fell down and sustained injuries. Therefore, the appellant is not liable to pay compensation to the respondent. Further, the appellant / Transport Corporation has stated that the respondent has not added the owner of the vehicle and the insurer of the vehicle as parties to the claim petition.

5. Before the Tribunal, the respondent has examined himself as PW1 and examined Dr.Venugopal, who gave treatment, as P.W.2 and marked seven documents as Exs.P1 to P7. On the side of the appellant, no one was examined and no document was marked.

6. The Tribunal after considering the pleadings, oral and documentary evidence, came to the conclusion that the accident occurred due to negligence on the part of the appellant and awarded a sum of Rs.15,34,965/- as compensation to the respondent/claimant.

7. Against the said award passed by the Tribunal, dated 09.07.2014 made in M.C.O.P.No.2005 of 2011, the appellant/Transport Corporation has filed the present Civil Miscellaneous Appeal challenging the quantum of compensation.

8. The learned counsel for the appellant contended that the Tribunal ought not to have fixed the monthly income of the respondent at Rs.15,000/- in the absence of any proof filed by

the respondent to prove his occupation and income. The Tribunal ought not to have taken the permanent disability of the respondent at 50%, which is on the higher side. The doctor assessed the disability to the particular limb of the body of the respondent. It should have been taken to the whole body. By doing so, the disability would be 1/3rd of the total disability. The Tribunal ought not to have adopted multiplier method to calculate the loss of earning capacity of the respondent and it is not a fit case for adopting multiplier method. There is no evidence available on record to show how the disability sustained by the respondent would affect his future earning capacity. In absence of such evidence, the Tribunal could not have adopted the multiplier method. The Tribunal without properly appreciating the evidence on record awarded the amounts on the higher side. Therefore, he prayed for setting aside the award passed by the Tribunal.

9.I have heard the learned counsel for the appellant and perused all the materials available on record.

10.As far as the quantum of compensation is concerned, on the date of accident i.e., on 31.05.2011, the respondent was admitted in Govt. Hospital, Kallakurichi, thereafter in PIMS Hospital, Pondicherry and private hospitals and left leg above the Knee was amputated. P.W.2/Dr.Venugopal has deposed that the respondent will not be able to do his work as done earlier as the left leg above the knee was amputated. P.W.2/Doctor has assessed the disability of the respondent at 85% for the amputation of his left leg above the knee. However, the Tribunal has reduced the same to 50%. In the nature of accident and avocation of respondent, the Tribunal applied multiplier method, which is proper. The Tribunal fixed the monthly income of the respondent at Rs.15,000/- and applying multiplier 15 and considering 50% disability awarded a sum of Rs.13,50,000/- (15,000 x 12 x 15 X 50%) taking 50% disability, which is in order. The Tribunal after considering both the oral and documentary evidence, awarded a total sum of Rs.15,34,965/- as compensation to the respondent/claimant under different heads. In my considered opinion, the compensation awarded by the Tribunal is just and reasonable. In the above circumstances, this Court is not inclined to interfere with the award passed by the Tribunal.

11. Accordingly, the award passed by the Tribunal is hereby confirmed and the Civil Miscellaneous Appeal is dismissed. The Appellant Transport Corporation is directed to deposit the award amount along with accrued interest and costs, less the amount

deposited, if any, within a period of twelve weeks from the date of receipt of a copy of this judgment. On such deposit, the respondent is permitted to withdraw the award amount along with accrued interest and costs, after adjusting the amount, if any, already withdrawn. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

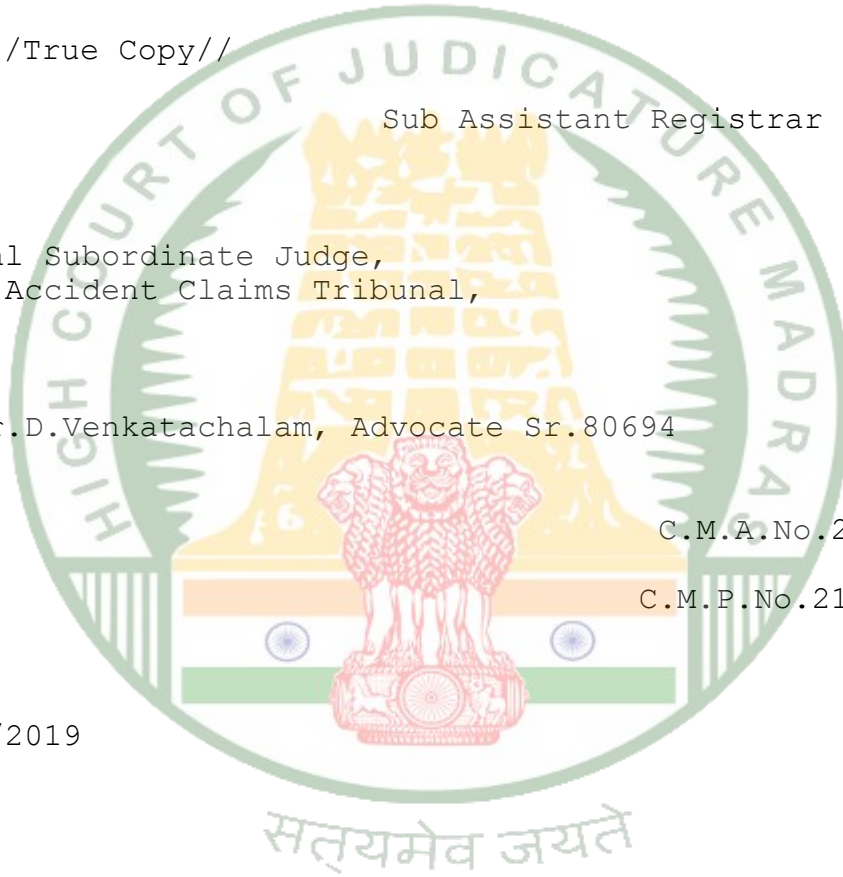
To

The Special Subordinate Judge,
The Motor Accident Claims Tribunal,
Cuddalore.

+1cc to Mr.D.Venkatachalam, Advocate Sr.80694

C.M.A.No.2775 of 2018
and
C.M.P.No.21140 of 2018

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