

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2845 of 2018
and C.M.P.No.21668 of 2018

The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Chennai - Division - I. ... Appellant/1st Respondent

(Cause Title amended vide order dated
14.11.2005 made in C.M.P.No.17837 of 2005)

Vs.

1.Matheus ...1st Respondent/Petitioner

2.M/s.Marrappa Bus Transport,
25, Kothukara Nalla Street,
Erode.

3.The Branch Manager,
United India Insurance Company Limited,
Main Road, Gobichettipalayam.

4.C.Parvathi

5.The Branch Manager,
National Insurance Company Ltd.,
Salem.

.. Respondents 2 to 5/Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of
Motor Vehicles Act, against the judgment and decree dated
06.06.2002 made in M.C.O.P.No.176 of 1996 on the file of the
Motor Accidents Claims Tribunal, 1st Additional Sub Court,
Villupuram.

For Appellant : Mr.G.Muniratnam

For R1 : Batta due.

For R2 to R5 : Given up

J U D G M E N T

The Civil Miscellaneous Appeal is filed against the award dated 06.06.2002 made in M.C.O.P.No.176 of 1996 on the file of the Motor Accidents Claims Tribunal, Ist Additional Sub Court, Villupuram.

2.The appellant is first respondent, first respondent is claimant and the respondents 2 to 5 are the respondents 2 to 5 in M.C.O.P.No.176 of 1996 on the file of the Motor Accidents Claims Tribunal, Ist Additional Sub Court, Villupuram. The first respondent filed the said claim petition, claiming a sum of Rs.12,65,000/- as compensation for the injuries sustained by him in the accident that took place on 20.06.1994.

3. According to the first respondent, on 20.06.1994, while he was travelling from Peravoorani to Chennai as passenger in a second respondent Tourist Bus insured with the third respondent and when the bus was near the Arasur Koot Road, the driver of the bus belonging to the appellant Transport Corporation overtook the bus belonging to the fourth respondent insured with the fifth respondent and dashed against the second respondent bus, which was coming in the opposite direction. Due to the said impact, the first respondent, who travelled in the second respondent bus, sustained multiple injuries all over his body. According to the first respondent, the accident occurred only due to rash and negligent driving by the driver of the bus belonging to the appellant. At the time of accident, the first respondent was 45 years and he was working as a Service Engineer in Quinn India Limited and was earning a sum of Rs.6,000/- per month.

4.The appellant/Transport Corporation filed counter statement and denied all the averments made by the first respondent. According to the appellant, the driver of the second respondent bus drove the same in a rash and negligent manner and caused the accident. Therefore, the appellant is not liable to pay any compensation to the first respondent.

5.The third respondent/Insurance Company of the second respondent bus filed counter statement and contended that in the claim petition itself, it is stated that the driver of the bus belonging to the appellant/Transport Corporation drove the bus in a rash and negligent manner and caused the accident. Therefore, the third respondent is not liable to pay any compensation to the first respondent.

6.The fifth respondent/Insurance Company of the bus belonging to the fourth respondent filed counter statement and

contended that the driver of the bus belonging to the appellant/Transport Corporation drove the bus in a rash and negligent manner and dashed against the second respondent bus. The bus belonging to the fourth respondent did not dash against any one of the buses and therefore, fourth and fifth respondents are not necessary parties to the claim petition.

7. Before the Tribunal, the first respondent examined himself as P.W.1 and three other witnesses as P.W.2 to P.W.4 and marked 24 documents as Exs.P1 to P24. On the side of the appellant and respondents 2 to 5, no oral and documentary evidence was let in.

8. The Tribunal after considering the pleadings, oral and documentary evidence, came to the conclusion that the accident occurred only due to the rash and negligent driving by the drivers of the buses belonging to the appellant and second respondent and directed the appellant, respondents 2 and 3 jointly and severally to pay a sum of Rs.1,35,000/- as compensation to the first respondent/claimant.

9. Against the said award passed by the Tribunal, dated 06.06.2002 made in M.C.O.P.No.176 of 1996, the appellant/Transport Corporation has filed the present Civil Miscellaneous Appeal challenging the negligence as well as quantum of compensation.

10.The learned counsel appearing for the appellant contended that the accident occurred only due to the rash and negligent driving by the drivers of the second respondent tourist bus, in which the first respondent was travelling and another private bus belonging to the fourth respondent. The Tribunal erred in relying on Ex.P1/F.I.R., which was marked through the first respondent without examining the author of the document. The Tribunal failed to note that no police officer was examined to prove the negligence of the driver of the bus belonging to the appellant. The Tribunal ought to have fixed contributory negligence on the part of the drivers of the second respondent bus and another bus belonging to the fourth respondent. The Tribunal without considering the materials on record, awarded the compensation on the higher side under the heads of disability, injuries and medical expenses and prayed for setting aside the award of the Tribunal.

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

12.From the materials available on record, it is seen that the first respondent was examined as P.W.1 and in his evidence, he deposed that the accident occurred due to the rash and

negligent driving by the driver of the bus belonging to the appellant/Transport Corporation. The driver of the bus belonging to the fourth respondent has lodged a complaint before the Police Station and F.I.R. was marked as Ex.P1. In F.I.R., it is stated that while the driver of the appellant bus was overtaking the bus belonging to the fourth respondent dashed against the second respondent bus, wherein the first respondent was travelling, which was coming in the opposite direction and caused the accident. In view of oral evidence and considering Ex.P1/F.I.R., the Tribunal held that the accident occurred only due to rash and negligent driving by the drivers of the buses belonging to the appellant and second respondent and directed the appellant, second respondent and its insurer, the third respondent to pay the compensation to the first respondent/claimant. I do not find any error in the said reasoning of the Tribunal.

13.As far as quantum of compensation is concerned, the first respondent/P.W.1 in his evidence, deposed that he was admitted in the hospital as in-patient for 40 days. In the accident, he sustained injuries on his head, right leg and lost hearing capacity in the left ear and to prove the same, he produced Exs.P3 and P4/medical bills, Ex.P8/scan report, Ex.P17/x-ray and Ex.P19/disability certificate. The Tribunal considering Ex.P19/disability certificate, fixed disability of the first respondent at 25%. In the claim petition, the first respondent stated that he was working as a Service Engineer in Quinn India Limited and was earning a sum of Rs.6,000/- per month at the time of accident and to prove the same, P.W.2/Subba reddy, one of the employees, was examined. Ex.P18/salary certificate was marked, in which it is stated that the first respondent/claimant is getting a sum of Rs.3,500/- per month as consulting fees. But the said income is not permanent. Therefore, the Tribunal fixed a sum of Rs.2,000/- per month as notional income of the first respondent, applied multiplier 15 and awarded a sum of Rs.90,000/- (Rs.2,000/- X 12 X 15 X 25%) as compensation towards permanent disability, which is in order. The Tribunal after considering both the oral and documentary evidence, awarded a total sum of Rs.1,35,000/- as compensation to the first 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.

14.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 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 first

respondent is permitted to withdraw the award amount with interest and costs, after adjusting the amount already withdrawn, if any, by making necessary application before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

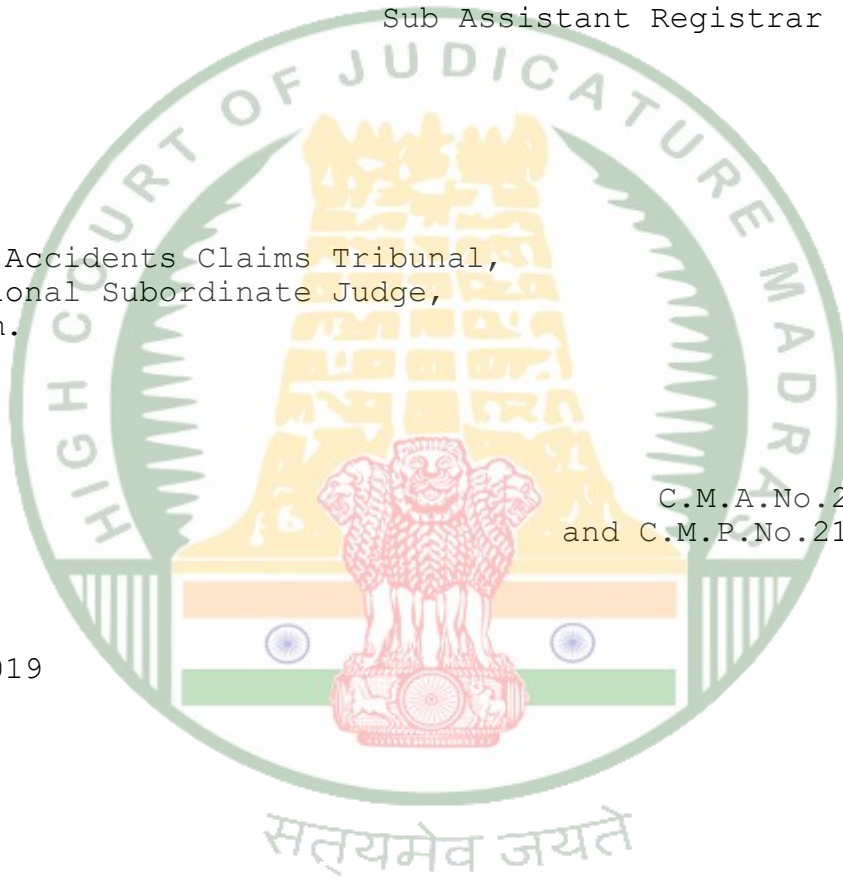
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To

The Motor Accidents Claims Tribunal,
1st Additional Subordinate Judge,
Villupuram.

C.M.A.No.2845 of 2018
and C.M.P.No.21668 of 2018

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srg 5/3/2019



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