

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.07.2019

CORAM :

THE HONOURABLE MR. JUSTICE R. MAHADEVAN

C.M.A.No.2387 of 2002

and

C.M.P.No.17149 of 2002

Tamil Nadu State Transport Corporation (K-Dn I) Ltd.,
Rep. by the Managing Director,
Kumbakonam.

... Appellant

Vs.

R.Durgaji

... Respondent

Prayer : Civil Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 17.11.2001 in M.C.O.P.No.268 of 2000 on the file of the Motor Accident Claims Tribunal (Principal Subordinate Judge), Nagapattinam.

For Appellant : Mr.M.Krishnamoorthy

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant State Transport Corporation against the judgment and decree dated 17.11.2001, passed by the 'Motor Accident Claims Tribunal (Principal Subordinate Judge), Nagapattinam' (hereinafter referred to as 'the Tribunal'), in M.C.O.P.No.268 of 2000.

2.It is the case of the respondent/claimant that on 25.04.1999, he was travelling as a passenger in a bus, bearing Registration No.TN-49-N-0649, belonging to the appellant Transport Corporation, from Thanjavur to Mannarkudi. When the bus was nearing Vaduvur lake (South Bank), due to rash and negligent driving by its driver, it got capsized on the right side of the lake. Due to the said impact, the respondent sustained grievous injuries, for which, he underwent treatment at Thanjavur Medical College Hospital, Thanjavur. He later, filed a claim petition, claiming a compensation of Rs.1,50,000/-. The Tribunal, on consideration of the materials and evidence, awarded a total compensation of Rs.42,560/-with interest @ 12% p.a. from the date of claim petition. Aggrieved over the same, the appellant Transport Corporation has filed the present appeal.

3.The learned counsel for the appellant has disputed only the quantum of compensation awarded by the Tribunal. According to him, the Tribunal has erred in awarding a huge sum of Rs.34,560/- towards loss of income due to permanent disability at 8%, which deserves to be interfered by this Court.

4.Heard the learned counsel for the appellant Transport Corporation and perused the materials available on record.

5.It is seen that the appeal was admitted way back in the year 2002, but the appellant Transport Corporation has not taken proper steps to serve papers on the respondent even at this length of time. However, considering the fact that the appeal is of the year 2002, this Court is inclined to proceed with the appeal on merits.

6.Since the appellant Transport Corporation has not assailed the findings of the Tribunal on negligence and liability of the Transport Corporation to pay compensation, there is no requirement for this Court to go into the same in detail and hence, the same are confirmed as such.

7.The respondent/claimant examined himself as P.W.1, according to whom, he was aged about 49 years and was earning Rs.4,500/- per month as a mechanic, but no authenticated proof was produced; and due to the accident, he received grievous injuries in right shoulder and head and also sustained fracture in left wrist and chin. The injuries sustained by the respondent/claimant was supported by the evidence of Dr.P.Rajagopal (P.W.2), who stated in his evidence that the respondent sustained permanent disability of 35% due to mal-union of bones of the left hand and Ex.P5 is the disability certificate. However, the Tribunal has taken only 8% as the disability suffered by the respondent/claimant, taking note of Ex.P3-discharge-slip, as per which, the mal-union of bones has been completely rectified after treatment.

Thereafter, the Tribunal has taken the monthly income of the respondent at

Rs.3,000/- and adopted the multiplier of 13 and awarded Rs.34,560/- towards loss of income due to disability, besides awarding Rs.1,000/- towards medical expenses, Rs.500/- towards transportation charges, Rs.1,000/- towards extra-nourishment, Rs.500/- towards loss of amenities and Rs.5,000/- towards pain and suffering, which this Court is of the opinion, are just and reasonable and the same cannot be treated as exorbitant and excessive at any stretch of imagination and hence, the same are hereby confirmed.

8. In fine, this Civil Miscellaneous Appeal is dismissed. No costs. The appellant Transport Corporation is directed to deposit the award amount, as ordered by the Tribunal, with interest, after deducting the amount if any already deposited, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit, the Tribunal shall transfer the same to the Savings Bank account of the respondent/claimant, through RTGS, within one week thereafter. Consequently, connected Miscellaneous Petition is closed.

23.07.2019

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Index : Yes / No

Internet : Yes / No

Speaking order / Non-speaking order

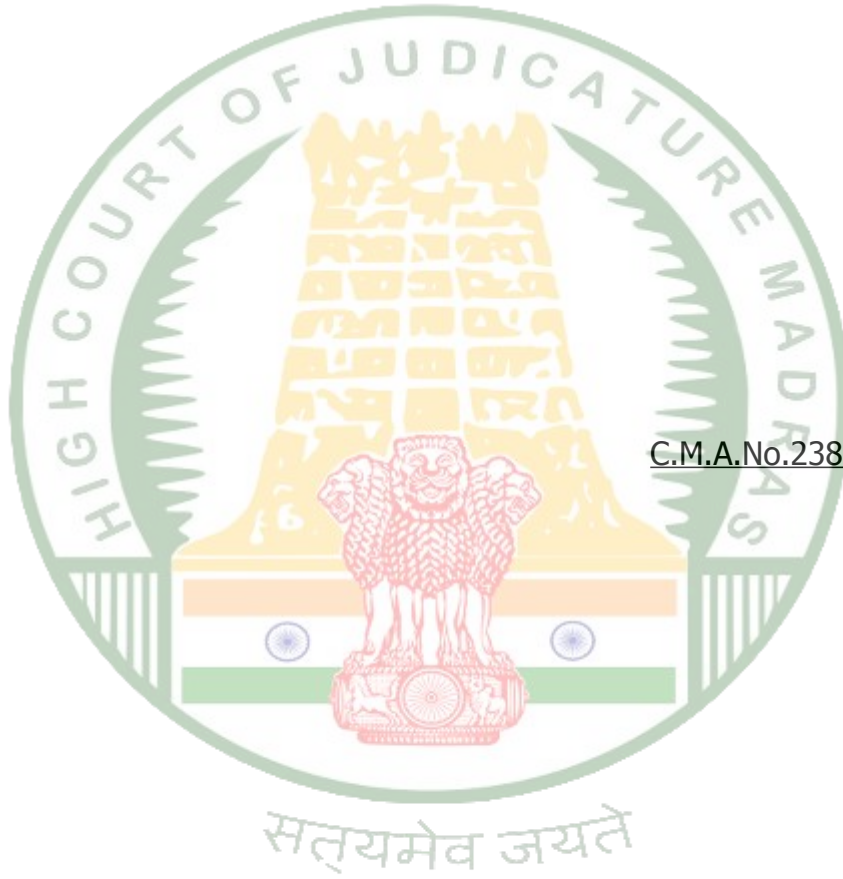
To

1. The Motor Accident Claims Tribunal
(Principal Subordinate Judge),
Nagapattinam.

2. The Section Officer,
VR Section, High Court of Madras.

R. MAHADEVAN, J.

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