

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.06.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.2389 of 2008
and M.P.No.1 of 2008

The Managing Director,
Tamilnadu State Transport Corporation Ltd.,
Division-I,
No.37, Mettupalayam Road,
Coimbatore.

... Appellant/ Respondent

Vs.

Annamalai

... Respondent/ Petitioner

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 24.09.2007 made in M.A.C.T.O.P.No.717 of 2004 on the file of the Additional District Judge, Motor Accidents Claims Tribunal, Fast Track Court No.IV, Coimbatore sitting at Tiruppur.

For Appellant : Mr.N.Anand

J U D G M E N T

The appeal is preferred by the appellant Transport Corporation against the Judgment and Decree dated 24.09.2007 made in M.A.C.T.O.P.No.717 of 2004 on the file of the Motor Accidents Claims Tribunal, Fast Track Court No.IV, Coimbatore sitting at Tiruppur (for brevity, "the Tribunal").

2. The case in brief, as stated in the claim petition, is as follows:

On the fateful day, ie. on 31.08.2004, at about 21.40hours, the respondent/claimant was going in a bike bearing Regn.No.TN-39-Y-9288 as a pillion rider, on Avinashi to Tirupur Road. When he was nearing Avinashilingampalayam pirivu, the bus bearing Regn.No.TN-33-N-0946 came in a rash and negligent manner and dashed against the bike. As a result of the same, the respondent/claimant sustained multiple injuries all over the body. Stating that the accident had occurred due to the rash and negligent driving of the driver of the bus, he filed a claim

petition claiming a compensation of Rs.5,00,000/-.

3.On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.3,19,000/- with interest at the rate of 7.5% per annum from the date of petition. Branding the quantum so awarded as excessive, the appellant/Transport Corporation has filed the present Civil Miscellaneous Appeal.

4.The learned counsel for the appellant/Transport Corporation has only disputed the quantum of compensation awarded by the Tribunal. According to him, the compensation of Rs.3,19,000/- awarded by the Tribunal is excessive and there is no basis for awarding such huge sum.

5.Heard the learned Counsel for the appellant and perused the materials available on record carefully and meticulously.

6.It is seen that the respondent is not ready in notice. Even though this appeal was admitted and a conditional order of stay was granted way back in the year 2008, the appellant/Transport Corporation has not taken proper steps to serve papers to the respondent, even at this length of time. However, considering the fact that the appeal is of the year 2008, this Court is inclined to proceed with this appeal on merits.

7.Since the appellant/Transport Corporation has not disputed the manner in which the accident took place, the finding of the Tribunal that the accident had occurred only due to the rash and negligent driving of the driver of the bus, need not be interfered with by this Court.

8.Before the Tribunal, the claimant himself examined as P.W.1. one Dr.Senthilkumar was examined as P.W.2, besides examining one Sekar as P.W.3 and Exs.A1 to Ex.A6 were marked. On the side of the appellant/Transport Corporation, no oral and documentary evidence were adduced. P.W.1 stated in the claim petition that he was aged about 37 years and was earning Rs.4,000/- per month as cutting master. However, no authenticated document was filed to prove the same. PW.2/doctor-an Ortho Surgeon, working in CMC Hospital, deposed that he examined the respondent/claimant on 10.09.2007 and issued Ex.A4 disability certificate (67%), fixing the permanent partial disability suffered by the respondent/claimant due to restricted movements of right hip joint, total loss of movement at right knee joint, restricted movement of right ankle joint, loss of muscle power and muscle wasting at right leg, shortening of right leg by 8 cm, malunited fractures at femur and tibia and loss of stability. Ex.A6 is X-ray. Taking note of all those

oral and documentary evidence, the Tribunal has rightly taken the monthly income of the injured at Rs.3,000/- and loss of earning power at 50%; adopted the multiplier of 16, based on the age of the injured at 37 years, as per Ex.A3 accident register; and ultimately quantified the compensation under the head "loss of income" at Rs.2,88,000/-, which this Court is not inclined to interfere.

9.That apart, the award of Rs.15,000/- for pain and suffering, Rs.3,000/- for extra nourishment, Rs.10,000/- for transport charges, and Rs.12,000/- for loss of income during the treatment period, in the considered view of this Court, is fair and reasonable and hence, the same is hereby confirmed.

10.In the result, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected miscellaneous petition is closed. The appellant/Transport Corporation is directed to deposit the award amount as ordered by the Tribunal with interest and costs, after deducting the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this Judgement. On such deposit, the Tribunal shall transfer the amount lying in the deposit to the savings bank account of the respondent/claimant through RTGS within a period of one week thereafter.

Sd/-

Assistant Registrar(AD I)

//True Copy//

Sub Assistant Registrar

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To

1.The Additional District Judge,
Motor Accidents Claims Tribunal,
Fast Track Court No.IV,Coimbatore at Tiruppur.

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

+1cc to Mr.N.Anand , Advocate SR.No. 55078

C.M.A.No.2389 of 2008
&
M.P.No.1 of 2008

A.SK(18/02/2020)