

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.06.2019

CORAM

THE HON'BLE Mr. JUSTICE R.MAHADEVAN

C.M.A. No.4231 of 2005 &
C.M.P. No.20549 of 2005

Tamil Nadu State Transport
Corporation Limited
(Coimbatore Division-II)
rep. by its Managing Director,
Chennimalai Road,
Erode District.

... Appellant/2nd Respondent

Vs.

1.V.Sundaram
2.K.M.Shanmugam
(R2-Given up)

... 1st Respondent/Petitioner

Civil Miscellaneous Appeal filed under Article 173 of Motor Vehicles Act, 1988 against the award and decretal order dated 28.4.2005 and made in M.C.O.P.No.986 of 2002 on the file of the Motor Accident Claims Tribunal (Additional District Court, Fast Track Court No.4) Coimbatore at Tiruppur.

For Appellant : Mr. S.V.Vasanthakumar

J U D G M E N T

This Civil Miscellaneous Appeal is preferred by the Transport Corporation as against the award passed by the Claims Tribunal for a sum of Rs.90,130/- to the first respondent/claimant for the injuries sustained by him in a motor vehicle accident.

2.The case in brief is as follows:

On 19.11.2001 at about 3.00 p.m., the first respondent was riding his TVS-50 Moped bearing registration No.TN37 E 5147 on Coimbatore-Avinashi Road. When he was proceeding in front of Dhanam Textiles, Thottipalayam Piruvu, the Transport Corporation Bus bearing registration No.TN33 N 1391 came in a rash and negligent manner and hit the first respondent from behind. Due to the said impact, he sustained multiple injuries in all over

the body. Stating so, he filed a claim petition claiming a compensation of Rs.3,50,000/-. The Tribunal, on consideration of the materials and evidence adduced by the parties, awarded the total compensation at Rs.90,130/- with interest at 9%pa from the date of petition. Aggrieved over the same, the appellant Transport Corporation has come up with this appeal.

3.The learned counsel for the Appellant Transport Corporation submitted that without considering the evidence of R.W.1, the Tribunal has erred in holding that the accident had occurred due to the rash and negligent driving of the driver of the bus belonging to the appellant transport Corporation. He further submitted that the compensation awarded by the Tribunal under the head "loss of income" for 24% permanent disability is highly excessive and exorbitant and hence, the same has to be reduced.

4.Heard the learned counsel for the appellant and perused the materials available on record. Though the appeal was admitted way back in the year 2006, the appellant transport corporation has not taken proper steps to serve papers on the first respondent/claimant even at this length of time. However, considering the passage of time, this Court is inclined to proceed with this appeal on merits.

5.P.W.1/claimant has deposed that on 19.11.2001, when he was riding his moped on Coimbatore-Avinashi Road, the driver of the bus bearing Regn.No.TN37 E 5147 drove the vehicle in a rash and negligent manner and hit the claimant and a Maruti Car which was going in front of the bus and dashed against an Ambassador Car, which was coming from the opposite direction and thereby, caused the accident. The testimony of P.W.1 was supported by Ex.P1 First Information Report, Ex.P3 charge sheet and Ex.P4 judgment of the criminal court. To deny the manner of accident, as narrated by the first respondent/claimant, the appellant transport Corporation examined one Gnanaguru, Assistant Engineer, working in the appellant Transport Corporation, as R.W.1, who has asserted that after enquiry, he found that at the time of accident, the driver of the bus drove the vehicle carefully and cautiously; and the first respondent/claimant alone rode the moped rashly and negligently and fell down from the vehicle and thereby, caused the accident. However, he categorically admitted in his cross examination that at the time of accident, he had not travelled in the offending vehicle and he was not eyewitness to the occurrence. Except R.W.1, there was no oral and documentary evidence to dispute the claim of the claimant. Thus, the Tribunal based on the oral and documentary evidence available on record, has rightly come to the conclusion that the accident had occurred due to the rash and negligent driving of the driver of the bus and accordingly, fastened the

liability on the appellant transport corporation, which this Court is not inclined to interfere.

6.As far as the quantum of compensation is concerned, the Tribunal has taken the monthly income of the injured at Rs.2,100/- and adopted the multiplier of 11 and taken the disability at 24 % as assessed by the Doctor (PW2) and arrived at the compensation under the head "loss of income" at Rs.66,528/-, which is just and reasonable and also based on Exs.P5 to P9 and P11 and P12 the medical records and the evidence of P.W.1(claimant) and P.W.2(doctor) and hence, the same need not be interfered with by this Court. Further, the Tribunal has awarded Rs.250, Rs.1,000/-, Rs.17,352.71 (as per Ex.P10) and Rs.5,000/- towards transportation, extra nourishment, medical expenses and pain and suffering respectively, which, in the opinion of this Court, are just and quite reasonable and hence, the same warrant no interference.

7.In such view of the matter, this Civil Miscellaneous Appeal is dismissed, affirming the award passed by the Claims Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

8.The appellant-Transport Corporation is directed to deposit the award amount as ordered by the Claims Tribunal, along with interest and costs, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal shall transfer the amount to the Savings Bank Account of the claimant / injured / first respondent herein through RTGS, within a period of one week thereafter.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

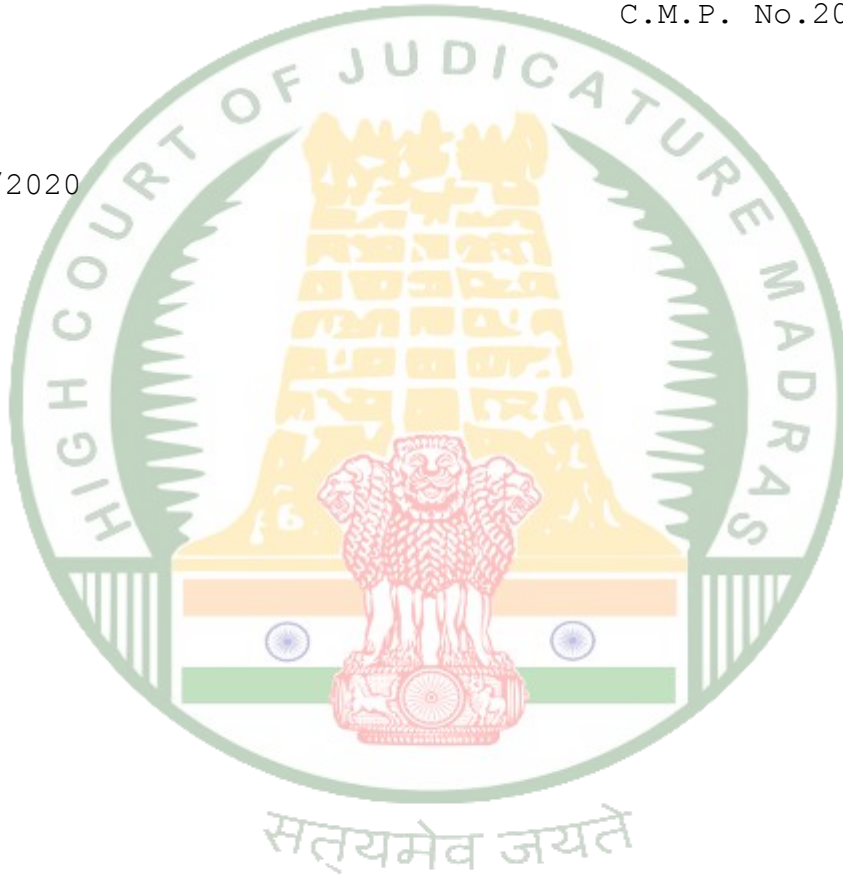
1.The Motor Accident Claims Tribunal,
(Additional District Court, Fast Track Court, no.4)
Coimbatore at Tiruppur.

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

+lcc to Mr.S.V.Vasanth Kumar, Advocate Sr.45715

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