

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.1105 of 2011
and
M.P.No.1 of 2011

The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
(Coimbatore Division) Erode - 1.

... Appellant /2nd Respondent

Vs.

1.C.Gunasekar @ Sekar ...Ist Respondent/Petitioner

2. P.Selvaraju

(R2 set exparte before the Tribunal)

...2nd Respondent/Ist Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 15.09.2010 made in MCOP.No.101 of 2010 on the file of Motor Accidents Claims Tribunal, Chief Judicial Magistrate Erode.

For Appellant : Mr. S.V.Vasanthakumar

J U D G M E N T

This appeal is preferred by the Transport Corporation against the award of a sum of Rs.2,48,525/- towards compensation to the first respondent/claimant due to the injuries sustained by him in a motor vehicle accident.

2. The case in brief is as follows:

On the fateful day, i.e., on 26.10.2009, at about 7.30 am, when the first respondent/claimant was riding as pillion rider in a TVS-50 moped bearing registration No.TN33 P 3297 which was riding by one Madeswaran alias Karuppannan on Erode to Perundurai main road, proceeding towards Tiruppur for attend their duties, the bus bearing registration No.TN33 N 1814 belonging to the second respondent appellant and driven by its driver viz., first respondent came in a rash and negligent

manner and hit the moped from behind. Due to the said impact, the first respondent/claimant sustained grievous injuries, for which, he filed a claim petition claiming a sum of Rs.5,00,000/- as compensation. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.2,48,525/- with interest at the rate of 7.5% per annum from the date of petition. Challenging the quantum of compensation awarded by the Tribunal, the appellant Transport Corporation has filed the present Civil Miscellaneous Appeal.

3.The learned counsel for the appellant Transport Corporation contended that the quantum of compensation awarded by the Tribunal is excessive, exorbitant and disproportionate to the injuries sustained by the first respondent and hence, the same has to be reduced.

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

5.It is seen that the first respondent is not ready in notice. Even though a conditional order of Stay was granted way back in the year 2011, the appellant Transport Corporation has not taken proper steps to serve papers to the first respondent. However, having regard to the efflux of time, this Court is inclined to decide this appeal on merits.

6.The learned counsel for the appellant Transport Corporation has not disputed the finding of the Tribunal that the accident had occurred only due to the rash and negligent driving of the driver of the bus and hence, the said finding of the Tribunal need not be interfered with by this Court.

7.As regards the quantum of compensation awarded by the Tribunal, the first respondent/claimant himself examined as P.W.1, who deposed that he was aged 37 years and was earning a sum of Rs.10,000/- per month. P.W.2 & P.W.3/Doctors, who examined the claimant, deposed in his evidence that the first respondent/claimant sustained the following grievous injuries:

- (i)fracture in right side of chest and ribs bones;
- (ii)Injury at right forearm;
- (iii)Injury at below the right elbow;
- (iv)Injury at lower jaw and 3 teeth were mobilization and all over the body.

After assessing the first respondent/claimant, the doctors issued Ex.P8 & Ex.P11-disability certificate respectively, to the tune of 40%. Ex.P7 is X-ray, which revealed that the first respondent/claimant sustained multiple injuries. The Tribunal, after taking note of the age, avocation, income and the injuries

sustained by the first respondent/claimant, has taken the monthly income of the first respondent/claimant at Rs.3,000/- (Rs.100/- per day); adopted the multiplier of 15 and permanent disability at 40%; and quantified the compensation under the head "loss of income due to disability" at Rs.2,16,000/- (36,000/- x 15 x 40/100). The Tribunal has rightly determined the income, adopted the multiplier and assessed the loss of income for the permanent disability suffered by the first respondent/claimant and hence, the same does not require any interference by this Court.

8. That apart, the Tribunal has awarded Rs.2,525/- towards medical charges, which is the actual medical expenses incurred by the first respondent/claimant for his treatment and hence, the same is hereby confirmed. Further, the Tribunal has quantified Rs.15,000/- towards pain and suffering, Rs.10,000/- towards extra nourishment and Rs.5,000/- towards transportation. Thus, the Tribunal has awarded the total compensation of Rs.2,48,525/- to the first respondent/claimant, which are fair, just and reasonable and the same cannot be said to be excessive and exorbitant at any stretch of imagination, considering the nature of the injuries sustained by the first respondent/claimant and in the given facts and circumstances of the case.

9. In fine, affirming the award passed by the Tribunal, this Civil Miscellaneous Appeal is dismissed. No costs. The appellant Transport Corporation is directed to deposit the entire compensation amount 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 Judgement. On such deposit, the Tribunal shall transfer the same to the savings bank account of the first respondent/claimant through RTGS within a period of one week thereafter. Consequently, connected Miscellaneous Petition is closed.

सत्यमेव जयते
Sd/-

Assistant Registrar(C.O)

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Sub Assistant Registrar

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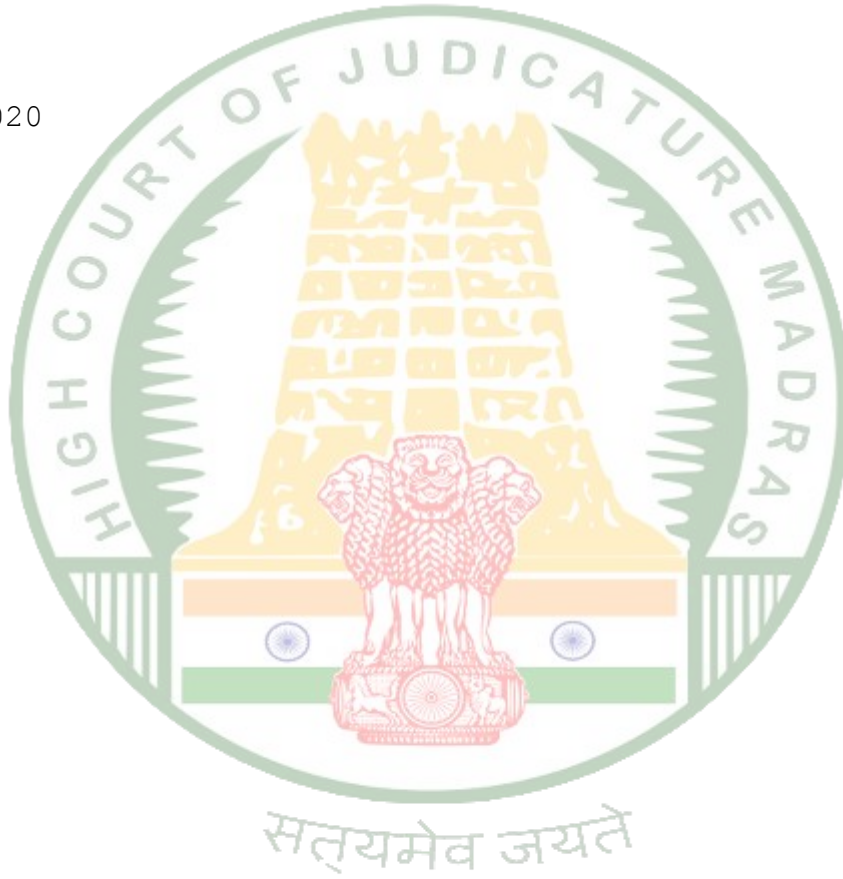
1. The Chief Judicial Magistrate
The Motor Accidents Claims Tribunal,
Chief Judicial Magistrate,
Erode.

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&
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