

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.07.2019

CORAM

THE HON'BLE MR.JUSTICE R.MAHADEVAN

Civil Miscellaneous Appeal Nos.3482 & 4159 of 2008

The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Coimbatore Division - II,
Chennimalai Road,
Erode

... Appellant in CMA No.3482/2008
& R-3 in CMA No.4159 of 2008/Petitioner

vs

1. K.R.Subramaniam ... R-1 in CMA No.3482/2008
& Appellant in CMA No.4159/2008
2. K.Kandasamy (givenup) ... R-2 in CMA No.3482/2008
& R-1 in CMA No.4159 of 2008
3. The Oriental Insurance Co. Ltd.,
No.59 Rajaji Street,
Gobichettipalayam ... R-3 in CMA No.3482/2008
& R-2 in CMA No.4159 of 2008

Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree, dated 16.08.2007 passed in MACT Op No.20 of 2007, dated 16.08.2007, on the file of the Motor Accident Claims Tribunal, Additional District Court cum Fast Track Court No.1, Erode.

For Appellant in CMA No.3482/2008
& R-3 in CMA No.4159 of 2008 : Mr. N.Anand.

For R-1 in CMA No.3482/2008
& Appellant in CMA No.4159/2008 : Mr. K.Govi Ganesan.

COMMON JUDGMENT

The Claims Tribunal has ordered Rs.77,100/- as compensation to one K.R.Subramaniam / claimant (first respondent in CMA No.3482 of 2008 and appellant in CMA No.4159 of 2008) who was a conductor by avocation, in the Transport Corporation (Appellant in CMA No.3482/2008 and third respondent in CMA No.4159 of 2008).

2. It is the case of the claimant before the Tribunal that on 10.09.2005 at about 12.05 pm, when he was working as conductor in the bus bearing Registration NO.TN38N0800, the driver drove the bus slowly and cautiously and at that time, the Van bearing Registration No.TN39M1674, driven by one Parthasarathy, in a rash and negligent manner, dashed on the front left-side of the bus. Due to the accident, the claimant, driver of the bus and some passengers sustained fracture and multiple injuries. Hence, the claimant has filed a claim petition before the Tribunal for a sum of Rs.4,00,000/- as compensation.

3. The Tribunal, based on the witnesses account and documents available on record, has fastened the liability on both the drivers of the Transport Corporation Bus and Van, and arrived at the quantum at Rs.77,100/-, payable by the Transport Corporation and the Insurance Company (Appellant in CMA No.3482/2008 : R-3 in CMA No.4159 of 2008 and R-3 in CMA No.3482/2008 : R-2 in CMA No.4159 of 2008) in equal proportion.

4. Being dis-satisfied with the quantum of compensation awarded, the claimant / appellant, has preferred CMA No.4159 of 2008 whereas challenging the findings on negligence as well as quantum, the Transport Corporation has preferred CMA No.3482 of 2008.

5. Heard the learned counsel for the appellant and the Transport Corporation. Despite service of notice and their names having been printed in the cause list, there is no representation on behalf of the Insurance Company and the driver of the Van and hence, after giving opportunities thrice, the matters are taken up for disposal on merits.

6. Since the issue involved in both these cases is inter-linked, these Appeals are taken-up together and a common judgment is pronounced. For the sake of convenience, the parties are referred to as per their ranking in the MCOP.

7. The learned counsel for the claimant would submit that the Tribunal failed to see that he had sustained fracture injuries on his right shoulder and was an inpatient for nearly 6 days and hence, considering these aspects, the Tribunal ought to have awarded more compensation; the Tribunal failed to award any sum towards future loss of earnings. He further submitted that in any event, the award passed by the Tribunal is meagre and very low.

8. On the other hand, the learned counsel for the Transport Corporation submitted that the Tribunal has failed to consider the counter statement filed by the Transport Corporation in a proper perspective; the Tribunal failed to note that the FIR and also the charge sheet were filed as against the Van Driver only; in any event, the award passed by the Tribunal is highly excessive and hence, the same is liable to be scaled down.

9. While answering the question of negligence, the Tribunal has taken note of the FIR (Ex.P-1), Motor Vehicle Inspector's Reports (Exs.P-2 and P-3), and charge sheet (Ex.P-5) coupled with the evidence of P.W.1, P.W.3 and P.W.4, and has observed that no documents have been filed either by the Insurance Company or by the Transport Corporation to discredit the version of P.W.1; the Rough sketch prepared by the Police during investigation has not been produced by either parties to prove the manner of accident in a detailed manner; as per the Motor Vehicles Inspector's Reports damage had been caused to both vehicles; and the mode of accident was not explained through eye-witnesses account. After observing so, the Tribunal has ultimately fixed the negligence on both the drivers of the bus and van and accordingly fastened the liability on the Transport Corporation and the Insurance Company in equal proportion. The said findings on negligence rendered by the Tribunal are based on evidence and documents available on record, which in the considered view of this Court, do not warrant any interference.

10. As far as the quantum of compensation awarded by the Tribunal is concerned, the Tribunal has considered the heads of medical expenses, transportation and extra nourishment, loss of earning during treatment period, loss of future earnings on account of permanent disability and pain and suffering and mental agony and ultimately quantified the compensation at Rs.77,100/-.

11. It is not in dispute that the claimant has suffered fracture on right shoulder and he was assessed with 25% disability. P.W.2 Doctor has also given evidence before the Tribunal to that effect, after narrating the nature of injuries sustained by the claimant. Hence, considering the same, the amount awarded towards pain and suffering and mental agony at Rs.15,000/- needs enhancement and awarding Rs.45,000/- would be just and is accordingly awarded. Further, towards future medical expenses, nothing was awarded by the Tribunal. Hence, a sum of Rs.10,000/- is awarded under that head.

12. Likewise, the amount awarded towards loss of earning during treatment period at Rs.2,100/-, which in the opinion of this Court, is very low. It is not in dispute that the claimant

was working as Conductor and with the fracture on shoulder, he could not be attending duty for at least two months. Hence, the award passed under that head is hereby enhanced to Rs.10,000/-.

13. Thus, the award passed by the Tribunal is enhanced to Rs.1,25,000/- from Rs.77,100/-, the breakup details of which reads as follows:-

Pain, suffering and mental agony	-Rs. 45,000/-
Transport Expenses and Extra nourishment	-Rs. 5,000/-
Loss of earning during treatment period	-Rs. 10,000/-
Permanent disablement	- Rs. 25,000/-
Medical expenses	-Rs. 30,000/-
Future medical expenses	- Rs. 10,000/-

	Rs.1,25,000/-

14. In the result, CMA No.4159 of 2008 filed by the claimant / appellant is partly-allowed and CMA No.3482 of 2008 filed by the Transport Corporation is dismissed. No costs.

15. The compensation amount, as determined by this Court, shall be deposited, in equal proportion, by the Transport Corporation and Insurance Company, less the amount already deposited, if any, along with interest at 7.5% per annum, from the date of petition, till the date of deposit, within a period of four weeks from the date of receipt of a copy of this judgment. The Transport Corporation and the Insurance Company are not liable to pay any interest on the compensation amount, in respect of the default period (if any), for which, condonation of delay has been ordered. On such deposit being made, the Tribunal shall transfer the compensation amount to the savings bank account of the claimant, through RTGS, within one week thereafter. The claimant shall pay the necessary court fee for the enhanced compensation amount before receiving the copy of this judgment.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

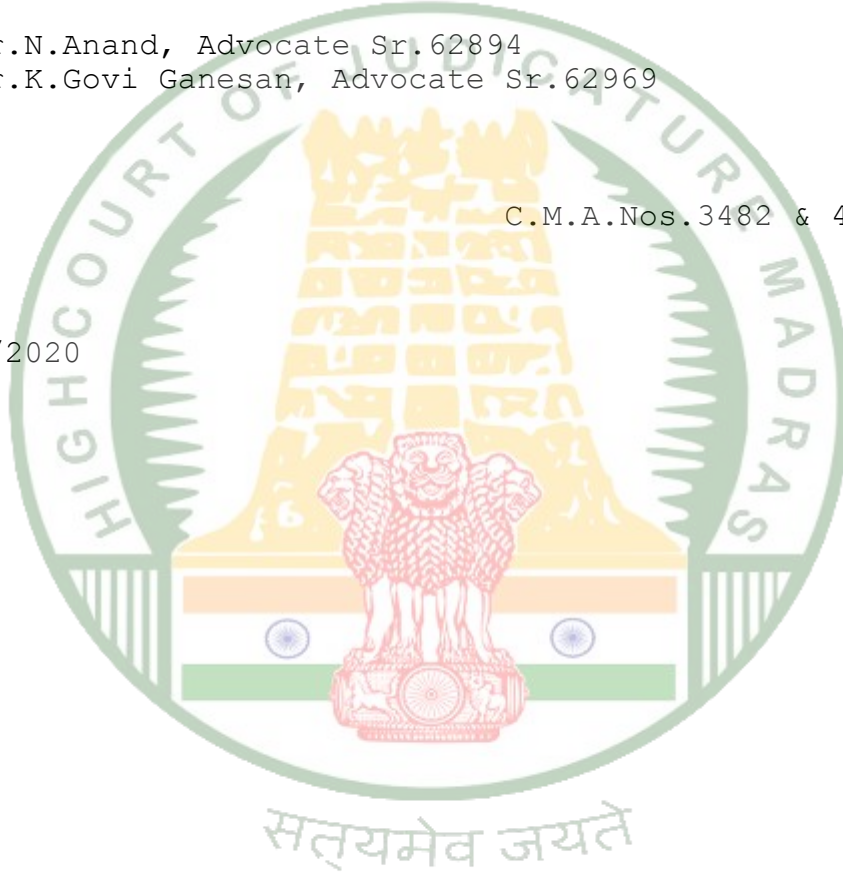
To

1. Motor Accident Claims Tribunal,
Additional District Court cum
Fast Track Court No.1, Erode.
2. The Section Officer,
V.R.Section, Madras High Court,
Chennai.

+1cc to Mr.N.Anand, Advocate Sr.62894
+1cc to Mr.K.Govi Ganesan, Advocate Sr.62969

C.M.A.Nos.3482 & 4159 of 2008

BS (CO)
srg 15/10/2020



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