

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.09.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

CMA.No.2734 of 2009

and

MP.No.1 of 2009

The Managing Director,
Tamil Nadu State Transport Corp. Ltd.,
Coimbatore Division - II,
Erode.

.. Appellant/Respondent

vs.

M.Sidhaiyan

..Respondent/Petitioner

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 21.06.2006 passed in MCOP.No.77 of 2006 on the file of the Motor Accident Claims Tribunal / Additional District Court, Fast Track Court No.4, Bhavani.

For Appellant	: No appearance
For Respondent	: Mr.K.Kannadhasan for Mr.V.Ayyadurai

JUDGMENT

The Managing Director, Tamil Nadu State Transport Corporation Limited, Coimbatore Division - II, Erode, the respondent in MCOP.No.77 of 2006 on the file of the Motor Accidents Claims Tribunal/ Additional District Court, Fast Track Court No.4, Bhavani has filed the present appeal questioning the liability and the quantum of compensation awarded by the Tribunal. The claimant filed the above claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.5,00,000/- for the injuries sustained by him in a road accident that took place on 06.12.2003.

2. On 06.12.2003, at about 10.00 am, when the claimant was riding his motorcycle bearing Registration No. TN 36 A 9990 on Salem - Coimbatore main road, a speeding bus bearing Registration No. TN 33 N 1106 belonging to the Tamil Nadu State Transport Corporation Limited hit the motorcycle, as a result of which, the injured was thrown out and sustained injuries all over his body. According to the claimant, the rash and negligent driving of the driver of the bus was the cause of the accident and that since the said bus belongs to the Tamil Nadu

State Transport Corporation Limited, they are liable to pay compensation to him.

3. The present appellant / Tamil Nadu State Transport Corporation Limited contested the claim petition. The learned Motor Accidents Claims Tribunal / Additional District Judge, Fast Track Court No.4, Bhavani after analysing the evidence on record, awarded a compensation of Rs.3,28,787/- together with interest at the rate of 7.5% per annum to the claimant. Aggrieved over the orders passed by the Tribunal, the Tamil Nadu State Transport Corporation Limited has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

4. No appearance on behalf of the appellant.

5. Heard Mr.K.Kannadhasan, learned counsel appearing for the respondent.

6. It is seen from the records that First Information Report (Ex.P1) was registered against the driver of the bus. The Sub-Inspector of Police, Chithodu Police Station after full investigation laid a charge sheet (Ex.P7) against the driver of the bus before the learned Judicial Magistrate No.3, Erode. The learned Judicial Magistrate No.3, Erode also found the drive of the bus guilty of the offences punishable under Sections 279 and 338 of Indian Penal Code and sentenced him to pay a fine of Rs.800/- and in default to pay the fine amount to undergo simple imprisonment for a period of three months. A copy of the Judgment passed by the learned Judicial Magistrate No.3, Erode is marked as Ex.P8.

7. The appellant examined the driver of the bus as RW1 and the Tribunal after analysing the oral and documentary evidence adduced on both sides, had clearly held that the driver of the bus was rash and negligent in driving the vehicle. In fact, he has given cogent reasons for coming to such conclusion. In the facts and circumstances of the present case, I do not see any reason to interfere with the findings recorded by the Tribunal, with regard to the negligence aspect.

8. The claimant has sustained a fracture of upper tibia and the discharge summary (Ex.P13) shows that the following procedures were done:

"Procedure I - on 05.01.2006

- Removal Broken implant
- Fibular Osteotomy
- Interlocking nailing with nail

Procedure II - on 09.01.2006

- Bone grafting
- Distal locking"

Dr.Krishnasami (PW3) had assessed the partial permanent disability as 45% and the Tribunal has awarded a compensation of Rs.3,28,787/- considering the age of the claimant and the loss of earning capacity. By no stretch of imagination, the award passed by the Tribunal can be said to be on the higher side. Therefore, the present appeal is liable to be dismissed.

9. In the result,

(i) The Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

(ii) The orders passed by the Tribunal is upheld.

(iii) The appellant / Tamil Nadu State Transport Corporation Limited is directed to deposit the compensation awarded by the Tribunal i.e., Rs.3,28,787/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of MCOP.No.77 of 2006 on the file of the Motor Accidents Claims Tribunal / Additional District Court (Fast Track Court No.4), Bhavani within a period of four weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made, the respondent / claimant is at liberty to withdraw the same after following due process of law.

Sd/-

Assistant Registrar(AD-II)

// True Copy//

Sub Assistant Registrar

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To
The Motor Accidents Claims Tribunal,
The Additional District Court,
Fast Track Court No.4, Bhavani.

Copy to: The Section Officer, V.R. Section,
High Court, Madras.

+1cc to Mr.V.Ayyadurai, Advocate, SR.No.81352.

+1cc to Mr.P.Muthukumarasamy, Advocate, SR.No.80818.

CMA.No.2734 of 2009
and
MP.No.1 of 2009

PM(CO)
CSR: 19.02.2020