

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.08.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.3312 of 2010 and M.P.No.1 of 2010
and
Cros.Obj.No.72 of 2011

Tamil Nadu State Transport Corporation Limited
Villupuram, rep.by
Managing Director. Appellant in CMA /
respondent in Cros.Obj.

Vs

A.Kaliamoorthy Respondent in CMA /
Cross Objector

Appeal under Section 173 of the Motor Vehicles Act and Cross
Objection under Order 41 Rule 22 of CPC, against the judgment
and decree dated 23.02.2010 made in MCOP No.27 of 2007 on the
file of the Motor Accidents Claims Tribunal, II Additional Sub
Judge, Villupuram.

Cross Objection filed under order 41, Rule 22 of the Civil
Procedure Code praying to set aside the Judgment and Decree
dt.23.2.2010 in MCOP.No.27/07 on the file of the Motor Accidents
Claims Tribunal-II, Additional Sub Court, Villupuram insofar as
it is against the Cross Objection.

For Appellant : Mr.V.Ramesh
in CMA and respondent
in Cross Objection

For Respondent
in CMA / Cross Objector : Mr.A.K.Kumarasamy

COMMON JUDGMENT

The case in brief, is as follows:

On 24.09.2006, the respondent in CMA / claimant / Cross
Objector was travelling in the bus bearing Reg.No.TN-32-N-1737
belonging to the appellant Transport Corporation, which was
plying from Koyambedu to Madapattu. At about 3.00 a.m., the bus
was proceeding on the Chennai - Trichy National Highway. When
the bus reached near Sothupakkam Muniyandi Vilas Balaji Kalyana

Mandapam within the limits of Melmaruvathur Police Station, the driver overtook a lorry which was proceeding in the front side in a rash and negligent manner and dashed against the right side body of the lorry. Due to the said impact, the left hand of the respondent, who was sitting in the left side seat of the bus, got severed. Thereafter, he was admitted in the hospital and his entire left hand was amputated. The injured claimant claimed a sum of Rs.20,00,000/- before the Tribunal, as compensation. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.3,68,730/- with interest at the rate of 7.5% per annum from the date of petition.

2.Challenging the same, the appellant Transport Corporation has filed the present Civil Miscellaneous Appeal and the claimant has filed the Cross Objection.

3.The learned counsel for the appellant Transport Corporation has submitted that the Tribunal has erred in holding that the driver of the appellant's bus was rash and negligent and was responsible for the accident. It is submitted that the injured had put his hand outside the bus and because of the same, he sustained injuries and hence there is contributory negligence on the part of the respondent / claimant. He also submitted that the compensation awarded by the Tribunal is exorbitant and excessive.

4.The learned counsel for the respondent in CMA / claimant / Cross Objector has submitted that the Tribunal has considered the materials and evidence in proper perspective and has awarded the compensation, which is just, fair and reasonable. Further, there is no contributory negligence on the part of the respondent / claimant. Hence, the compensation awarded by the Tribunal, does not require any interference in the hands of this Court.

5.Heard the learned counsel on either side and perused the materials available on record carefully and meticulously.

6.Ex.P1-First Information Report has been filed based on the complaint given by the conductor of the bus. It is stated in the complaint that since the driver of the lorry overtook the bus, the accident had occurred and further since the injured was keeping his hand outside the bus, he sustained injuries due to the accident. Even though it is stated in the complaint that the driver of the lorry overtook the bus, the First Information Report has been registered against the driver of the bus. For this, no objection has been raised by the Transport Corporation by way of writing any letter or giving any information. No steps have been taken by the Transport Corporation either to set aside the First Information Report or to take action against the

driver of the lorry. Further, there was no evidence against the claimant to state that he kept his left hand outside the bus. In these circumstances, considering the materials and evidence available on record, the Tribunal came to the conclusion that the accident had occurred only due to the rash and negligent driving of the driver of the bus belonging to the appellant Transport Corporation, which finding this Court is not inclined to interfere.

7. With regard to the quantum of compensation, the Tribunal has awarded a sum of Rs.3,01,158/- towards loss of income. The respondent / claimant was working as Assistant Headmaster in the Chengalrayan Cooperative Sugar Mill Matriculation School, Villupuram. Ex.P12 is the copy of Salary Slip. Considering Ex.P12-Salary Slip, Ex.P11-Attendance Register and Ex.P13-Medical Certificate for having taken leave, the Tribunal came to understand that the claimant was receiving a sum of Rs.6,435/- per month as monthly salary. Because of the accident, he cannot do his work independently and he cannot travel without the assistance of any person. Because of the amputation of the left hand, he finds it very difficult even to attend to the nature's call. Taking the monthly salary as Rs.6,435/-, the Tribunal arrived at the annual income, adopted the multiplier of 13 and arrived at Rs.3,01,158/- towards loss of income, in respect of 30% disability, which has been fixed by P.W.2-Doctor, as per Ex.P10. The Tribunal has also awarded a sum of Rs.10,000/- each towards transportation expenses, extra nourishment and attender charges, Rs.17,572/- towards loss of earning as per Ex.P13 and Rs.20,000/- towards pain and suffering. The Tribunal has rightly considered the materials and evidence, correctly assessed the income of the deceased, adopted the correct multiplier and arrived at Rs.3,01,158/- towards loss of income. The amounts awarded by the Tribunal towards other heads are also very reasonable and hence the same does not require any enhancement.

8. In the result, both the Civil Miscellaneous Appeal and the Cross Objection are dismissed. No costs. Consequently, the connected miscellaneous petition is closed. The appellant Transport Corporation is directed to deposit the award amount with interest, as ordered by the Tribunal, after deducting the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the claimant / Cross Objector is permitted to withdraw the same on making proper application before the Tribunal.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

To

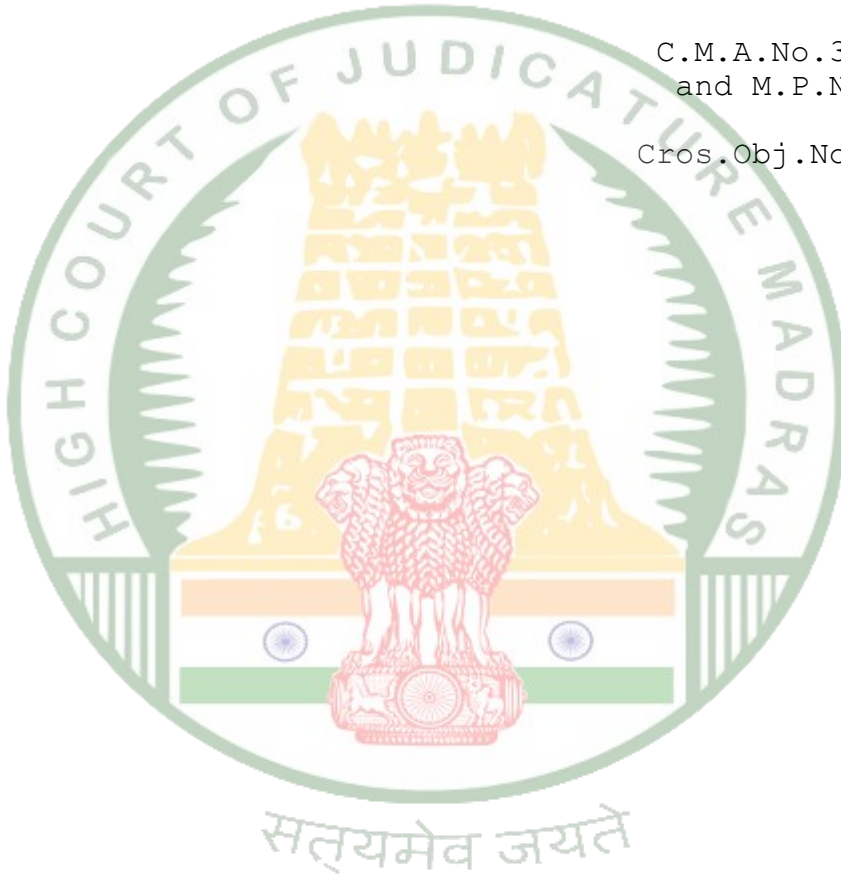
1.The Motor Accidents Claims Tribunal
II Additional Subordinate Judge, Villupuram.

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

+1 cc to M/s.T.Dhanyakumar, Advocate,sr.67774

rr(co)
krd 18/9

C.M.A.No.3312 of 2010
and M.P.No.1 of 2010
and
Cros.Obj.No.72 of 2011



WEB COPY