

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 16.04.2019

JUDGMENT DELIVERED ON : 24.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A.NO.3022 OF 2011

AND

M.P.NO.1 OF 2011

The Managing Director,
Tamil Nadu State Transport Corporation,
No.12, Ramakrishna Salai,
Salem. ... Appellant/Respondent

Vs.

Jayamurugan ... Respondent/Petitioner

PRAYER:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 22.09.2010 in M.C.O.P.No. 3 of 2010, on the file of the Motor Accidents Claims Tribunal, (Chief Judicial Magistrate Court), Namakkal.

For Appellant :Mr.V.Ramesh

For Respondent :Mr.A.R.Suresh

JUDGMENT

The respondent before the Tribunal/Insurance Company is the appellant herein, challenging the award passed in M.C.O.P.No.3 of 2010 on the ground of quantum.

2. The essence of the case is that (i) on 11.02.2009 at night about 10.45 p.m., when the claimant was going East on the side of the road with his bicycle near the water tank, the driver of a bus belonging to the Tamil Nadu State Transport Corporation bearing Registration No.TN 30 N 0268. The driver of the bus was speeding and careless and collided with the claimant. The driver of the bus was responsible for the accident.

(ii) In this accident, the claimant sustained bruising on his left wrist, a bone fracture, a severe fracture on his left finger and left leg and left shoulder and also the body was severally injured. The claimant was solid and healthy at the time of the accident. The claimant was employed as a water tank operator at Singlipat Panchyat and part-time during the accident, was earning Rs.5,000/- per month. The claimant is a person who can earn in his family.

(iii) The claimant has suffered a severe injury to his left arm and is unable to do any work with the left hand and fractures. Due to these effects, it is often impossible to get a job done and leave often. Moreover, the claimant can no longer earn income by doing his plumber business. As a result, the claimant and his family are in great distress. This is an irreparable loss to the claimant. This is the cause of the accident. Therefore, the claim petition was filed seeking compensation of Rs.5,00,000/-

3. Before the Tribunal, on the side of the claimant P.W.1 and P.W.2-Doctor are examined and Exhibits P1 to P6 are marked. On behalf of the respondent/Transport Corporation, R.W.1 was examined and no documents were marked.

4. The respondent/claimant filed the claim petition seeking compensation for the accidental injuries sustained due to the rash and negligent driving of the driver of the appellant/Tamil Nadu State Transport Corporation Bus.

5. The accident was due to the rash and negligent driving of the driver of the appellant/Transport Corporation is not in dispute and accordingly the said finding of the Tribunal is hereby confirmed.

6. On the point of quantum, both the parties are heard.

7. At the time of the accident, the claimant was working as a part-time plumber and also working as tanker operator in seemingly petty Panchayat Union. Due to the accidental injury, he had suffered compound fracture on the left wrist and the left to shoulder and also sustained injuries on the left hand and contended that due to injury serious underwent the surgery and in connection with the treatment, he was examined by P.W.2-Dr.Sivalingam who had issued Ex.P6-Permanent Disability Certificate and fixing the disability at the rate of 30%.

8. It is seen from Ex.P4-Discharge summary after the accident, there was a compound fracture on the left hand and the 3rd,4th and 5th fingers and bones are fractured and they are malunited after surgery and also treatment, there was all union

and he was in hospital as an in-patient from 11.02.2009 to 21.02.2009 and thereafter, due to the malunion is unable to use his left hand and the claimant being a plumber in profession that has resulted in functional disability.

9. Though the learned counsel for the appellant would contend that in view of the injuries sustained in the accident, he is able to continue his avocation as plumber as before the accident. The point for determination is whether the appellant/claimant has sustained as such nature of injuries and the same is rendered as functional disability. The criteria laid down by the Honourable Supreme Court in Rajkumar Vs. Ajaykumar & another case reported in 2010 (2) TN MAC 581 SC to award compensation by applying multiplier method has been satisfied in this case. In view of the adequacy of the evidence of PW.2 as it could be seen from Ex.P6 and hence the plea raised by the appellant's counsel is stands rejected and held that the respondent/claimant has suffered functional disability as the same is proved in the manner known to law.

10. Taking into consideration, the age of the deceased, I find that proper multiplier has been adopted by the Tribunal and the other compensation awarded under the other heads are also found to be just and fair and hence, this Court is of the considered view that the adoption of the multiplier method for the injuries sustained by the claimant being not only permanent disability but also a functional disability as mentioned in the Rajkumar's case and hence, the Tribunal as properly adopted the multiplier method and awarded the compensation and the entire compensation as awarded by the Tribunal appears to be just and fair does not warrant any interference by this Court at the appellate stage and hence, in this view of the matter, the quantum fixed by the Tribunal is hereby upheld and the appeal is devoid of merits.

11. In the result, सत्यमेव जयते

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

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

(iii) The appellant-Transport Corporation is directed to deposit the entire amount awarded by the Tribunal together with costs and interest at the rate of 7.5% per annum and if not entirely deposited, the same be deposited after deducting the amount already deposited and the amount be deposited to the credit of M.C.O.P.No.3 of 2010 on the file of the Motor Accidents Claims Tribunal, (Chief Judicial Magistrate Court),

Namakkal within a period of twelve weeks from the date of receipt of a copy of this order.

(iv) The claimant is permitted to withdraw the above amount, in the manner known to law.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal,
The Chief Judicial Magistrate Court,
Namakkal.

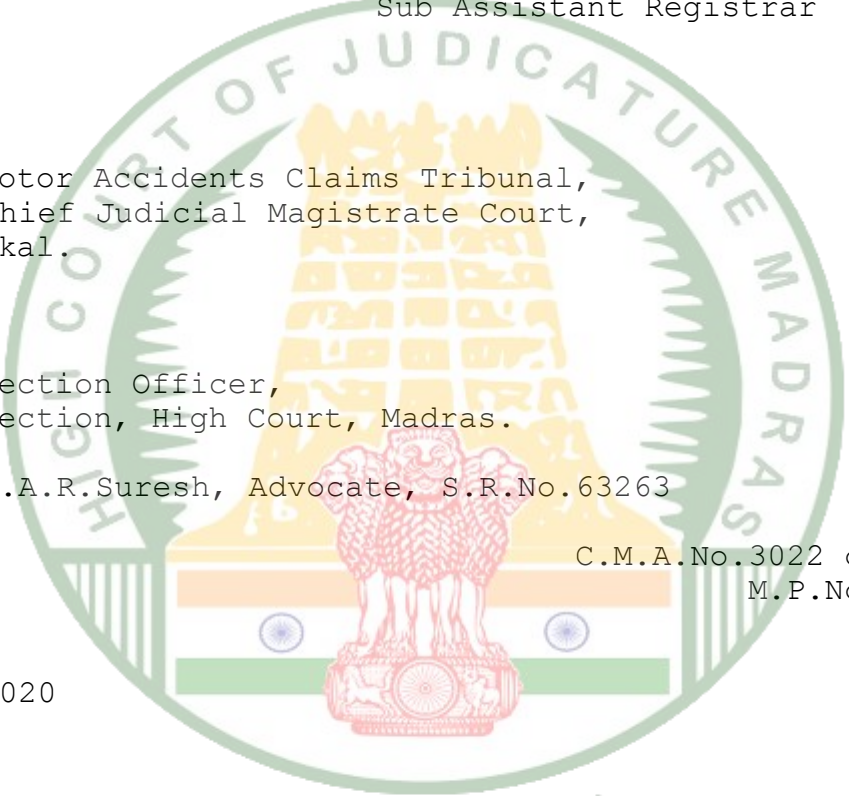
Copy To

The Section Officer,
V.R.Section, High Court, Madras.

+1cc to Mr.A.R.Suresh, Advocate, S.R.No.63263

C.M.A.No.3022 of 2011 and
M.P.No.1 of 2011

PPA (CO)
CS/02/06/2020



सत्यमेव जयते

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