IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 16.09.2019

CORAM:

THE HONOURABLE MRS. JUSTICE. R.HEMALATHA

CMA.No.3581 of 2011 and
M.P.No.1 of 2011
and
Cross Objection No.86 of 2012

CMA No.3581 of 2011

The Managing Director,
Tamil Nadu State Transport Corporation Limited,
Tiruvannamalai. ... Appellant/3rd Respondent

Vs.

1. Sivakami
2. Chandra
3. The Divisional Manager,
   United India Insurance Limited,
   No.46, Katpadi, Vellore.
   ... Respondents/ Petitioner and Respondents 1&2

Cross Objection No.86 of 2012

Sivagami ... Cross objector

Vs.

1. The Managing Director,
   Tamil Nadu State Transport Corporation Limited,
   Thiruvannamalai.
2. Chandra
3. The Divisional Manager,
   United India Company Limited,
   No.46, Katpadi Road, Vellore. ... Respondents

Prayer in CMA 3581 of 2011
This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 against the orders dated 24.02.2011 passed in MCOP No.4 of 2008 by the Chief Judicial Magistrate/ Motor Accident Claims Tribunal, Tiruvannamalai.

Prayer in Cross Objection No.86 of 2012
Cross objection filed under Order 41 Rule 22 of the Code of Civil Procedure against the orders dated 24.02.2011 passed in MCOP No.4 of 2008 by the Chief Judicial Magistrate/ Motor Accident Claims Tribunal, Tiruvannamalai.

Appearance in CMA No. 3581 of 2011

For Appellant : Mr. Annamalai

For Respondents : Mr.F.Terry Chellaraj (for R1)

No appearance for R2 and R3

Appearance in Cross objection No.86 of 2012

For Cross objector : Mr.F.Terry Chellaraj

For Respondent : Mr.Annamalai (for R1)

No appearance for R2 and Re

COMMON JUDGMENT

The appellant in CMA No.3581 of 2011 is the 3rd respondent and the Cross Objector in Cr. Obj. 86 of 2012 is the claimant in in MCOP No.4 of 2008 on the file of the Motor Accident Claims Tribunal, Tiruvannamalai.

2. The Cross objector/claimant filed the above said claim petition under Section 166 of the Motor Vehicles Act seeking compensation of Rs.5,00,000/- for the injuries sustained by her in a road accident that took place on 17.10.2007, when she was travelling in an auto bearing registration No.TSJ-4676 belonging to the 2nd respondent and insured with the 3rd respondent. According to the claimant, when the auto was nearing Kilanaikkarai Murugaiyan Memorial School, Mannalurpet Road, Tiruvannamalai, the driver of the auto drove the auto rashly and negligently and hit the bus bearing Registration No.TN-32-N-1079 belonging to the Tamil Nadu Transport Corporation, which was coming on the opposite direction, as a result of which she sustained injuries and was immediately rushed to Government Hospital at Tiruvannamalai. It is the contention of the claimant that the rash and negligent driving of the driver of the auto was the cause of accident and that since the owner of the auto/2nd respondent insured his vehicle with the United India Insurance Company/ 3rd respondent, both of them are jointly and severally liable to pay compensation to her.

3. The Motor Accident Claims Tribunal, after analysing the evidence on record, awarded a compensation of Rs.1,10,000/- together with interest at the rate of 7.5% per annum to the claimant. The Tribunal further held that since this is a case of head on collusion between the auto and the bus, the award should be apportioned in the ratio 50:50. Aggrieved over the orders passed by the Tribunal, the State Transport Corporation has filed CMA No.3581 of 2011, whereas, the claimant has filed Cross Obj. No.86 of 2012 seeking enhancement of compensation.

4. In the instant case, First information Report was registered against the driver of the auto bearing registration No.TSJ-4676 and the Inspector of Police, after completing investigation has laid a final report against the driver of the auto for the offences punishable under Sections 279, 337, 338 and 304-A of the Indian Penal Code. However, the Tribunal had come to the conclusion that the driver of the bus was also equally responsible for the accident and therefore, directed the owner of the auto and its insurer as well as the State Transport Corporation to pay compensation in the ratio 50:50.

5. It is pertinent to point out that this is a case of head on collusion and the claimant had deposed that the driver of the bus was also rash and negligent in driving the vehicle. The Tribunal after considering the evidence on records had clearly concluded that both the vehicles were at fault. In the facts and circumstances of the case, I do not see any reason to interfere with the reasons assigned by the Tribunal. The Criminal Court records alone cannot be the sole reason in fixing responsibility on a particular person, especially, when there is a head on collusion on 60 feet wide road. Therefore, the appeal filed by the State Transport Corporation in CMA No.3581 of 2011 is liable to be dismissed.

6. As far as the quantum of compensation is concerned, the contention of the learned counsel appearing for the cross objector/claimant is that though Dr.Ravindran (PW2) had assessed the partial permanent disability of the claimant as 35%, the Tribunal, had reduced the same to 25% and awarded a meagre amount of Rs.1,10,000/-. Therefore, he prayed for enhancement of compensation.

7. A perusal of the discharge summary (Ex.P6) and the disability certificate (Ex.P7) clearly shows that the claimant has sustained fracture of humerus bone. However, the Tribunal without assigning any reason, had reduced the percentage of partial permanent disability of the claimant to 25%. It is also to be noted that Dr.Ravindran (PW2) had also deposed that the claimant is unable to move her shoulder on account of the accident. In the circumstances, the percentage of disability assessed by the Doctor (PW2) is taken up for calculating partial permanent disability. The accident took place in the year 2007. Hence Rs.2000/- is awarded per percentage. It is also to be noted that there is no functional disability warranting multiplier method. Accordingly a sum of Rs.70,000/- (2000x35) is awarded towards " partial permanent disability" . Since it is contended by the claimant that she is a milk vendor, a sum of Rs.4,500/- is fixed as her notional income per month. On account of the accident, the claimant definitely would not have been in a position to attend to her work for three months. Hence loss of income is calculated at Rs.13,500/- (4500 x 3). Apart from the above amounts, the claimant is also entitled to the following amounts.

Sl.No	Heads	Amount
1	Partial permanent disability (2000x35)	70000
2	Loss of income (4500 x 3)	13500
3	Pain and sufferings	25000
4	Extra nourishment	5000
5	Transportation	5000
6	Attender's charges	3000
7	Damage to clothes	1000
8	Loss of amenities	10000
	Total	1,32,500

This amount would carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

9. In the result,

(i) The appeal in CMA 3581 of 2011 is dismissed. No costs. The connected miscellaneous petition is closed.

(ii) The orders passed by Tribunal fixing liability on the insurer of the auto as well as the Tamil Nadu State Transport Corporation in the ratio 50:50 is upheld.

(iii) The cross objection No.86 of 2012 is partly allowed. No costs.

(iv) The compensation awarded by the Tribunal is enhanced from Rs.1,10,000/- to Rs.1,32,500/-.

(v) The insurer of the auto and the Tamil Nadu State Transport Corporation are directed to deposit the revised compensation amount of Rs.66,250/- each with interest at the rate of 7.5% p.a. from the date of claim petition till the date of deposit (less the amount already deposited by them) within 4 weeks from the date of receipt of a copy of this order.

(vi) On such deposit being made by the insurer and the State Transport Corporation, the claimant is entitled to withdraw the same, after following due process of law.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

mst

To

1.The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,Tiruvannamalai.

Copy to:

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

+1cc to Mr.R.Annamalai , Advocate SR.No.79572

+1cc to M/s.M.Malar , Advocate SR.No. 80318

CMA.No.3581 of 2011 and
M.P.No.1 of 2011 and
Cross Obj. No.86 of 2012

A.SK(12/02/2020)