

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.07.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.708 of 2011
and M.P.No.1 of 2011

The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
(Coimbatore Division II)
Chinnimalai Road, Erode-2.Appellant/2nd Respondent

Vs

1.S.Kulandairaj1st Respondent/Petitioner
2.N.Selvaraj2nd Respondent/Respondent
3.Rajendran
4.Royal Sundaram Alliance Co.Ltd.,
Sundaram Towers, 45, 46 Whites Road,
Chennai - 14.Respondents 3 & 4/Respondents 3 & 4
R2 & R3 Given up

Appeal under Section 173 of the Motor Vehicles Act against the judgment and decree dated 13.04.2010 made in M.C.O.P.No.39 of 2009 on the file of the Motor Accident Claims Tribunal, Sub-Court, Perundurai.

For Appellant : Mr.S.V.Vasanth Kumar
For R2 & R3 : given up

JUDGMENT

This appeal is preferred by the appellant/Transport Corporation against the award of a sum of Rs.1,12,565/- towards compensation to the first respondent / claimant due to the injuries sustained by him in the motor vehicle accident.

2.The case in brief, is as follows:

On the fateful day, ie. on 27.09.2005, at about 7.30 a.m., the 1st respondent / S.Kulandairaj was travelling as a passenger in the bus bearing Registration No.TN-33-N-1816 belonging to the appellant Transport Corporation, driven by the 2nd respondent

herein. When the bus reached near Telephone Exchange in the Vijayamangalam - Uthukuli North-South Main Road, the 2nd respondent drove the bus in a rash and negligent manner and hit the lorry bearing Registration No.KA 04 C 7888, belonging to the third respondent and insured with the fourth respondent Insurance Company, which came from the opposite direction. Due to the said accident, the 1st respondent lost his teeth and sustained injuries all over the body. He filed a claim petition before the Tribunal. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.1,12,565/- with interest at the rate of 7.5% per annum from the date of petition. Giving a finding that the accident had occurred due to the rash and negligent driving of the drivers of both the vehicles, the Tribunal fixed the liability on the part of the appellant Transport Corporation and the fourth respondent Insurance Company equally.

3.Challenging the same, the appellant Transport Corporation has filed the present Civil Miscellaneous Appeal.

4.The learned counsel for the appellant/Transport Corporation has submitted that the Tribunal has erred in holding that the driver of the bus bearing belonging to the Transport Corporation was also at fault, without properly appreciating the evidence. He also submitted that the compensation awarded by the Tribunal is excessive and exorbitant.

5.Heard the learned counsel appearing for the appellant and perused the materials available on record carefully and meticulously.

6.Though this appeal was admitted back way in the year 2011, the appellant has not taken proper steps to serve papers on the other side. However, due to paucity of time, this Court is inclined to dispose this appeal on merits.

7.The case of the 1st respondent/claimant before the Tribunal was that the lorry bearing Reg.No.KA-04-C-7888 came in a rash and negligent manner and dashed against the Transport Corporation bus, and due to the same, the accident took place. A counter statement was filed before the Tribunal on behalf of the appellant/Transport Corporation, in which it is stated that the accident had occurred only due to the rash and negligent driving of the driver of the lorry. It is seen that due to the accident, the lorry driver died on the spot and in that connection, the police registered a criminal case as against the 2nd respondent-Driver of the bus. Since there was head-on collision as is evident from the materials and evidence adduced, the Tribunal came to the conclusion that the accident had occurred due to the rash and negligent driving of both the drivers and accordingly

fixed the negligence on both the drivers at 50% each. This Court is not inclined to interfere with the said factual finding arrived at by the Tribunal.

8.The Tribunal has considered the evidence of P.W.2-Doctor who assessed the percentage of disability suffered by the 1st respondent as 23% and reduced the same to 15% since the Doctor who examined the injured is not the one who treated him and further he examined the injured only after five years from the date of accident. As far as income is concerned, the 1st respondent did not produce any documentary evidence. Therefore, in the absence of any authenticated document to fix the monthly income, the Tribunal, considering the age of the claimant, notionally fixed the monthly income at Rs.3,500/-, adopted the multiplier of 17 and arrived at the compensation towards loss of earning power at Rs.1,07,100/- for 15% disability, but awarded a sum of Rs.84,000/- since the claimant itself has claimed a sum of Rs.84,000/-. The Tribunal has also awarded a sum of Rs.7,000/- (Rs.3,500/- x 2) towards loss of income during the treatment period, for two months, Rs.2,000/- towards transportation, Rs.2,000/- towards extra nourishment, Rs.1,000/- towards damage to clothes/ and articles, Rs.13,565/- towards medical expenses and Rs.3,000/- towards pain and suffering. The Tribunal has properly analysed the materials and evidence available on record and has awarded reasonable compensation towards the above heads and hence the same need not be interfered with by this Court.

9.In the result, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected miscellaneous petition is closed. The appellant/Transport Corporation is directed to deposit the award amount with interest and costs, as ordered by the Tribunal, after deducting the amount if any already deposited, within a period of four weeks from the date of receipt of a copy of this judgment. Hence on such deposit being made, the 1st respondent / claimant is permitted to withdraw the award amount, on making proper application before the Tribunal.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

gbi

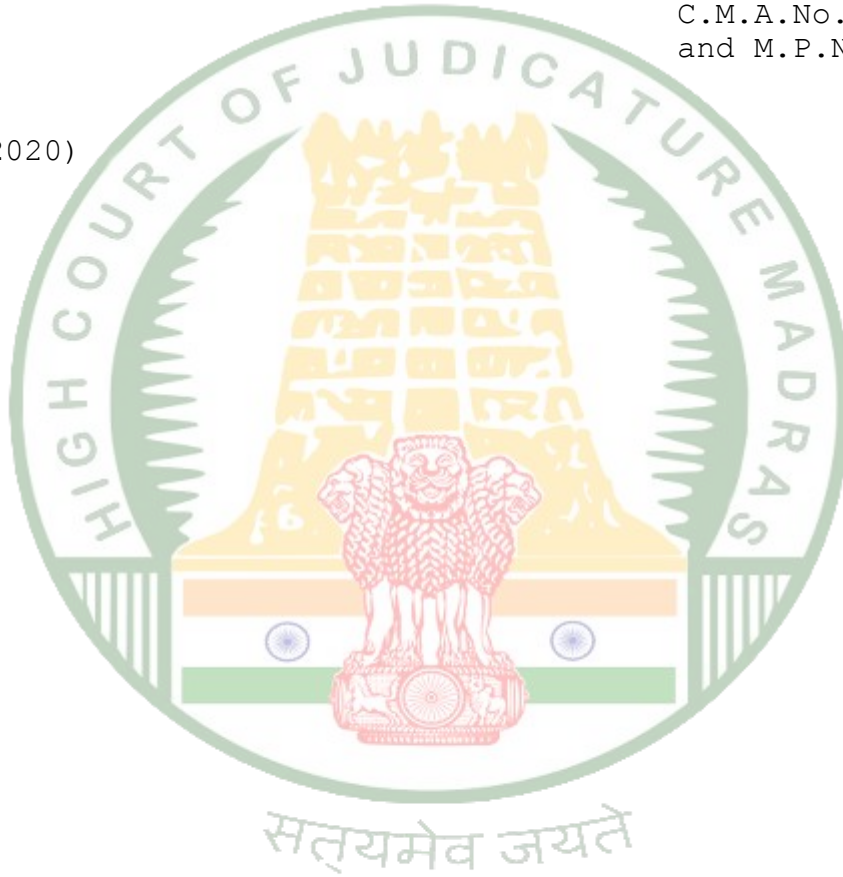
To

1.The Sub-Judge,
Motor Accident Claims Tribunal,
Perundurai.

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

C.M.A.No.708 of 2011
and M.P.No.1 of 2011

NRL (CO)
SP(08/09/2020)



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