

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.09.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

CMA.Nos.388 and 3023 of 2013,
and
M.P No.1, 1 of 2013

The Managing Director
Tamil Nadu State Transport
Corporation Ltd., Coimbatore,
Chennimalai Road, Erode.

: Appellant/2nd Respondent
in both the appeals

vs.

1.Eswari
2.Marimuthu
3.Deivanai
4.Raman
5.The New India Assurance
Company Ltd., having branch
office at 82, Thirumalai Plaza,
1st Floor, New Dharampuram
Road, Palani.

: Respondents/Petitioners and
Respondents 3 & 4 in CMA.No.388 of 2013

1.S.Gopinathan
2.M.Raman
3.The New India Assurance Company Ltd.,
having office at No.82, Dr.Thirumalai
Plaza, 1st Floor, New Dharapuram Road,
Palani.

: Respondents Petitioners and
Respondents 3 & 4 in CMA No.3023 of 2013

COMMON PRAYER: Civil Miscellaneous Appeals filed under Order 43 Rule 1(d) of CPC, against the fair and decretal orders dated 15.06.2010 passed in I.A.No.802 of 2009 in MCOP.No.622 of 2008 and I.A No.800 of 2009 in MCOP No.504 of 2008 respectively, on the file of the Motor Accidents Claims Tribunal / Additional District Judge, Fast Track Court No.III, Dharapuram.

For Appellant : Mr.S.V.Vasanthakumar
(in both CMAs)
For Respondents : Mr.Ma.Pa.Thangavel for R1 to R3
(in CMA.388 of 2013) No appearance for R4
Mrs.S.R.Sumathy for R5

For Respondents : Mr.Ma.Pa.Thangavel for R1
(in CMA No.3023 of 2013) Mrs.S.R.Sumathy for R3
No appearance for R2

COMMON JUDGMENT

The appellant, the Managing Director, State Transport Corporation, Erode is the 2nd respondent in MCOP No.504 of 2008 and 622 of 2008 on the file of the Fast Track Court No.III / Motor Accidents Claims Tribunal, Dharapuram. The 1st respondent in CMA No.3023 of 2013 filed the claim petition in MCOP No.504 of 2008 under Section 166 of the Motor Vehicles Act seeking compensation of Rs.4,00,000/- for the injuries sustained by him in a road accident that took place on 21.11.2007.

2. The case of the claimants in MCOP No.504 of 2008 and MCOP No.622 of 2008 is that on 21.11.2007 at about 1.30 p.m, when the victims were travelling in a car bearing Registration No.TN 57 B 1010 on Dharapuram - Udumalai Road, near Kondarasampalayam, a speeding bus bearing Registration No.TN 33 N 1356 belonging to the 2nd respondent / Tamil Nadu State Transport Corporation Limited, Erode, hit the car, which resulted in the death of Vijaya and one Thirumalaisamy and serious injuries to the claimant in MCOP No.504 of 2008.

3. Since the claim petitions arose out of the same accident, all of the claim petitions were tried jointly by the learned Additional District and Sessions Judge, Fast Track Court No.III, / Motor Accident Claims Tribunal, Dharapuram. Though the State Transport Corporation entered appearance in all the MCOP's, they were set exparte since they did not file any counter. Subsequently, the Managing Director, Tamil Nadu State Transport Corporation filed I.A No.800 of 2009 in MCOP No.504 of 2008 and I.A No.801 of 2009 in MCOP No.550 of 2008 and I.A No.802 of 2009 in MCOP No.622 of 2008 under Order 9 Rule 13 of Code of Civil Procedure to set aside the exparte decree passed against them. All the applications, after full contest were dismissed by the learned Additional District and Sessions Judge, Fast Track Court No.III / Motor Accident Claims Tribunal, Dharapuram. Aggrieved over the orders passed in I.A No.800 of 2009 and I.A No.802 of 2009, the present civil miscellaneous applications are filed by the Tamil Nadu State Transport Corporation, Erode.

4. It is pertinent to point out that the Tamil Nadu State Transport Corporation did not challenge the orders passed in I.A No.801 of 2009 in MCOP No.550 of 2008.

5. A perusal of the records shows that the Tribunal had awarded a sum of Rs.80,000/- for the injuries sustained by the claimant Gopinathan in CMA No.3023 of 2013. The discharge summary of Gopinathan shows that he sustained a fracture on his nose and a torn lip. The doctor (PW5) had assessed the partial permanent disability of the claimant as 20%. The injured was aged 30 years on the date of accident and the Tribunal, had awarded a sum of Rs.40,000/- towards partial permanent disability and apart from that, the Tribunal has awarded a sum of Rs.40,000/- under various heads, thus, totalling to Rs.80,000/-. In fact, the Tribunal had considered all the aspects of the case before passing the award of Rs.80,000/- and the award passed by the Tribunal is found to be reasonable. Therefore, there is no need to once again go into that aspect and direct the Motor Accident Claims Tribunal to consider the same afresh. Similarly, in CMA No.388 of 2013, it is a case of death and the Tribunal, after considering the prevailing principles of law at the time of passing of the orders, had awarded a just compensation of Rs.4,80,000/-. It is also relevant to point out that the claimants have not filed any appeal seeking for enhancement of compensation and therefore, in the facts and circumstances of the case, both the appeals are liable to be dismissed.

CMA.No.388 of 2013:

6. In the result,

(i) The Civil Miscellaneous Appeal is dismissed. No costs.

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

(iv) The appellant, Tamil Nadu State Transport Corporation Limited is directed to deposit the entire compensation awarded by the Tribunal i.e., Rs.4,80,000 /- (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.662 of 2008 on the file of the Motor Accident Claims Tribunal / Additional District and Sessions Judge, Fast Track Court No.III, Dharapuram, within a period of four weeks from the date of receipt of a copy of this order.

(v) On such deposit being made, claimants are at liberty to withdraw the same after following due process of law and as per the apportionment made by the Tribunal.

(vi) Consequently, the connected miscellaneous petition is closed.

CMA.No.3023 of 2013:

7. In the result,

(i) The Civil Miscellaneous Appeal is dismissed. No costs.

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

(iv) The appellant, Tamil Nadu State Transport Corporation Limited is directed to deposit the entire compensation awarded by the Tribunal i.e., Rs.80,000 /- (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.504 of of 2008 on the file of the Motor Accident Claims Tribunal / Additional District and Sessions Judge, Fast Track Court No.III, Dharapuram, within a period of four weeks from the date of receipt of a copy of this order.

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

(vi) Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(AD-I)

// True Copy//

Sub Assistant Registrar

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To

The Additional District and Sessions Judge,
Fast Track Court No.III,
Motor Accidents Claims Tribunal,
Dharapuram.

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

+1cc to Mrs.S.Sumathy, Advocate, SR.No.79597.

MG(CO)
CSR: 27.02.2020

CMA.Nos.388 of 2013
and 3023 of 2013

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