

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 12.07.2019
CORAM:

THE HONOURABLE MRS. JUSTICE S.RAMATHILAGAM

C.M.A.No.719 of 2015
and
M.P.No.1 of 2015

The Managing Director,
Tamil Nadu State Transport Corporation Limited,
Thiruvannamalai. ... Appellant/ Respondent

Vs

Jothi ... Respondent/ Petitioner

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against decree and judgment in M.C.O.P.No.138 of 2011 dated 17.01.2013 on the file of the Motor Accident Claims Tribunal, Sub Court, Hosur.

For Appellant : Mr.K.J.Shivakumar

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred by the Tamil Nadu State Transport Corporation Limited, against the judgment and decree made in M.C.O.P.No.138 of 2011 dated 17.01.2013 on the file of the Motor Accident Claims Tribunal, Sub Court, Hosur.

2. The brief facts leading to the claim application is as follows:

On 13.12.2010 at about 4.00 p.m., while the respondent herein/claimant was walking on the left side of the road, near Bathalapali market towards Hosur side, the driver of the bus, who belonged to the Tamil Nadu State Transport Corporation Limited, drove the bus in a rash and negligent manner, dashed on the respondent, due to which, the claimant sustained grievous injuries. The claimant took medical treatment for the said injuries, is stated to have sustained disability and incurred heavy medical expenses and also undergone pain and suffering and therefore, claimed Rs.5,00,000/- as compensation under various heads.

3. The appellant herein/Transport Corporation in the counter statement denied the mode of accident as stated by the claimant in the claim application by stating that the driver of the bus proceeding with moderate speed but suddenly a pedestrian crossed the road from North to South without

minding traffic rules and that there is no rash and negligence on the part of the driver of the bus. Further, the sum claimed by the claimant for medical expenses and other related heads are also denied as excessive by stating that the petitioner has not chosen to take treatment in the Government hospital and get treatment only in the private hospital for getting more compensation and hence, the sum claimed is excessive.

4. The Tribunal after perusing the evidence and documents, has given its finding that due to the negligence on the part of the driver of the Transport Corporation bus the accident had occurred and awarded a sum of Rs.1,47,000/-, as compensation under various heads as mentioned below:

Sl.No	Heads	Amount Awarded by the Tribunal
1.	Disability (35%)	70,000.00
2.	Pain and sufferings	35,000.00
3.	Transport expenses	5,000.00
4.	Extra nourishment expenses	5,000.00
5.	Attenders expenses	5,000.00
6.	Loss of income during the treatment period (6 x 4,500)	27,000.00
	Total	Rs.1,47,000/-

5. Aggrieved against the said award, the appellant/Transport Corporation has preferred this appeal.

6. The contention of the learned counsel for the appellant/Transport Corporation in the appeal is that it is because the negligence act of the claimant/respondent, the accident occurred and the finding of the Tribunal that the driver of the bus caused the accident, is erroneous. Further, he contended that the sum awarded by the Tribunal towards loss of income during the treatment period, by taking the monthly income at Rs.4,500/- for 6 months is very much on the higher side. It is also contended that the sum awarded towards disability at Rs.70,000/- by taking 35% disability is also very much on the higher side, without considering the nature of disability.

7. Heard the learned counsel for the appellant and perused the documents available on record. Taking into consideration the nature of disposal of the present CMA, notice to the respondent is dispensed with.

8. The only challenge made against the award is with regard to quantum. It is the considered opinion of this Court that the Tribunal after analysing the evidence of doctor who

deposed that the claimant sustained 4th metatarsal bone fracture and malunion by 2 degree and the resultant disability, she is unable to walk and stand for long time, unable to sit, stand, squat, climb up and get down the staircase and unable to do her agriculture work as before, assessed 35% disability and Further, the tribunal taking into consideration the age of the claimant i.e, 21 years old and nature of avocation, who is doing coolie work, awarded Rs.2000/- per percentage of disability, which by looking at any angle, cannot be found fault with.

9. It is seen that while determining the compensation, the Tribunal observed that Ex.P2/ wound certificate would go to show that the respondent sustained three grievous injuries and three simple injuries and treated for the fracture injury. Further, Tribunal has taken into consideration the evidence of PW2/Doctor, who assessed the disability at 35% and awarded a sum of Rs.2000/- per percentage of disability, thus Rs.70,000/- as compensation for disability. Further, the Tribunal has awarded sums under other heads. Thus, Rs.1,47,000/- is awarded as total compensation to the claimant/respondent herein is very much proper and reasonable in view of the documents and evidence placed before the Tribunal.

10. In view of the foregoing reasonings, this Court is of the view that the Appeal does not require any interference of this Court. Accordingly, the Civil Miscellaneous Appeal is dismissed. The award passed in M.C.O.P.No.138 of 2011 dated 17.01.2013 on the file of the Motor Accident Claims Tribunal, Sub Court, Hosur, is confirmed.

11. The appellant/Transport Corporation is directed to deposit the award amount along with interest and costs, 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. On such deposit being made, the Tribunal is directed to transfer the deposited amount to the Savings Bank Account of the claimant, forthwith, through RTGS. No costs. Consequently, connected MP is closed.

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Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To:

1.The Motor Accident Claims Tribunal,
Sub Court, Hosur.

<https://hcservices.ecourts.gov.in/hcservices/>

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

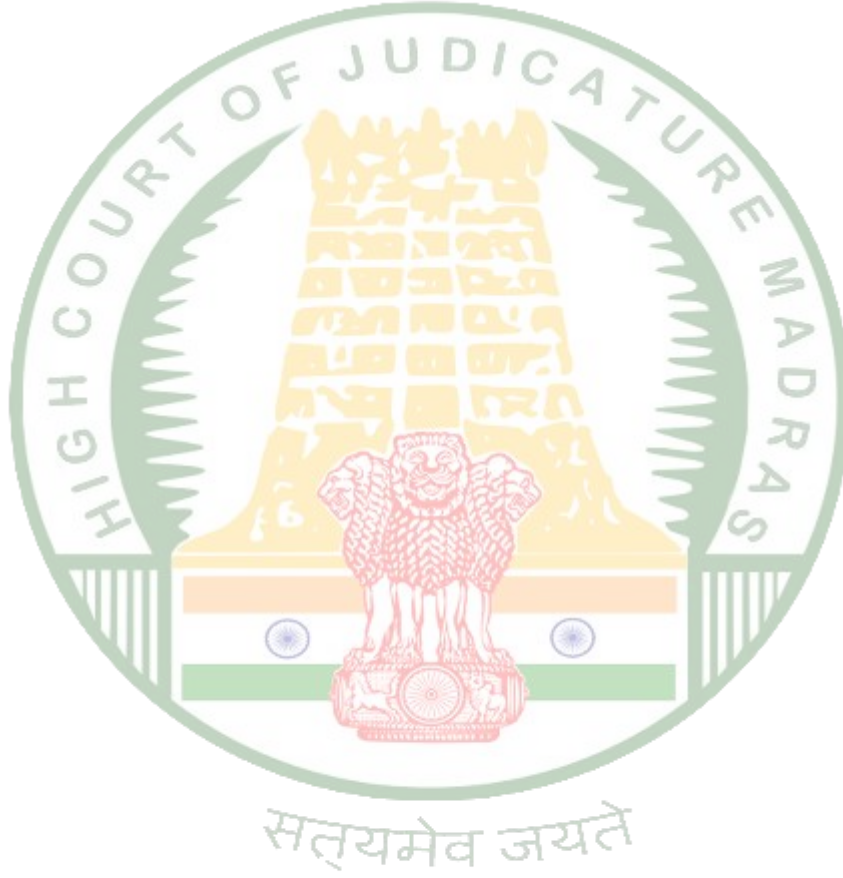
+lcc to Mr.K.J.Shivakumar , Advocate SR.No. 59453

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A.SK(27/02/2020)



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