



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.04.2019

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THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

WEB COPY

C.M.A. (MD) .No.1053 of 2017

and

C.M.P. (MD) .No.10799 of 2017

The Tamil Nadu State Transport
Corporation (Madurai) Ltd.,
Madurai
Now at Vannarapettai
Tirunelveli District
through its Managing Director.

... Appellants/2nd Respondent

Vs.

1.C.Sundaradhasan (Died)

2.C.Vijayakumar

(The 2nd respondent is the driver of the appellant
and that given up)

3.C.Kanagabai

4.S.Anitha

5.S.Amutha

(R3 to R5 as brought on record as Lrs of the
deceased 1st Respondent vide order dated 10.09.2018
made in C.M.P. (MD) .No.5843 to 5845 of 2018)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 10.08.2016 made in M.C.O.P.No.52 of 2011 on the file of the Motor Accident Claims Tribunal/Sub Court, Padmanabhapuram.

For Appellant :Mr.P.Prabhakaran

For R3 to R5 :Mr.J.John Jeyakumar

JUDGMENT

This Civil Miscellaneous Appeal has been preferred by the appellant/Transport Corporation, against the judgment and decree dated 10.08.2016 made in M.C.O.P.No.52 of 2011 on the file of the Motor Accident Claims Tribunal/Sub Court, Padmanabhapuram.

2.The brief facts of the case are as follows:

The claim of the claimants is that on 19.02.2010 at about 07.30 p.m., while the petitioner/first respondent was proceeding towards his house from Thikkanamcode junction by riding his cycle towards east on the northern side of the road, at that time, the first respondent who drove the bus bearing Registration No.TN-74/N-1076, came from behind, in a rash and negligent manner and dashed against the petitioner. Due to which, the first respondent fell down and the



left rear wheel of the bus run over his right forearm and his right leg was crushed. Immediately, he was taken to Kanyakumari Government Medical College Hospital, Asaripallam, Nagercoil and admitted as inpatient. Hence, the first respondent claimed a sum of Rs.7 lakhs as compensation.

3.The case of the claimants was resisted by the appellant/Transport Corporation by filing a counter statement. According to the appellant, due to the negligent act of the first respondent, the accident had taken place and hence, they are not liable to pay compensation. It is further stated that it is for the claimants to establish the age, occupation and income of the first respondent. In the absence of the same, the appellant/ Transport Corporation prayed for the dismissal of the claim petition.

4.Before the Tribunal on the side of the claimants no documents were marked and P.Ws.1 to 11 were examined as witnesses and on the side of the respondents, neither the document nor a witness has been marked.

5.The appellant/Insurance Company has filed a counter statement stating that without noticing the moving of vehicles, the first respondent cross the road and invited the accident. The driver of the bus driven the vehicle in a moderate speed by following the traffic rules and the accident had occurred only on the negligence part of the deceased. Hence, his contention is that the accident had occurred only due to the negligence of the first respondent. Further, it is contended that since no grievous injuries caused to the first respondent, the amount of compensation claimed in the petition is very high and without any basis and un-sustainable in law. The other aspects regarding the compensation claimed under various heads are also disputed by the appellant/Transport Corporation.

6.After considering the oral and documentary evidence, the Tribunal has given a finding that the accident had occurred only due to the rash and negligent driving on the part of the first respondent, directed the second respondent to pay the compensation of Rs.4,12,000/- with 7.5% interest per annum. Against which, the present appeal is filed by the appellant / Transport Corporation.

7.In the grounds, the learned counsel appearing for the appellant has contended that without appreciating the facts and evidence, the Tribunal had wrongly fixed the entire responsibility for the accident on the part of the Driver of the Transport Corporation Bus. Further, it is contended that the Tribunal, without following the norms and guidelines governing the Motor Accident Cases, awarded the said amount, which is too excessive and exorbitant one.

8.The grievance of the appellant/Insurance Company is that the amount determined by the Tribunal as loss of income of the first respondent at Rs.1,00,000/-, without any basis and the same is very



high. The other grievance is that the loss of income to the family assessed by the Tribunal is also not proper. Apart from that, in addition to a sum of Rs.1,00,000/- towards pain and suffering, the Tribunal has awarded a sum of Rs.1,00,000/- towards loss of disability which appears to be on the higher side. On the whole, the appellant/Transport Corporation sought for setting aside the judgment and decree of the Tribunal.

9. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondent Nos.3 to 5 and perused the materials available on record.

10. In the absence of examination of Doctor to prove the disability, the Tribunal has awarded a sum of Rs.1,00,000/- towards permanent disability, without any reliable document and evidence on the side of the first respondent/claimant. It is also brought to the notice of this Court that the claimant/injured treated only in the Government Hospital and the disability has not been proved on the side of the claimant by examining of the Doctor, who treated him as well as by way of document. Hence, the amount awarded under the head of permanent disability is excessive. Further, in the absence of any income proof, the loss of future income determined by the Tribunal at Rs.1,00,000/- is also excessive. Considering the period of treatment, the Tribunal awarded a sum of Rs.1,00,000/- towards pain and sufferings is also on the higher side.

11. On a perusal of the records, it is observed that the first respondent was 60 years old at the time of accident, who claimed himself as a loadman and the amount awarded by the Tribunal is excessive. This Court is of the considered view that in the absence of any other document regarding the income, disability, pain and sufferings, the amount awarded under these heads are hereby modified. Accordingly, the claimants are entitled for the following compensation:

S. No.	Description	Amount awarded by		Award confirmed / enhanced / granted
		Tribunal	this Court	
1.	Loss of income	1,00,000	1,00,000	Confirmed
2.	Transportation	1,000	1,000	Confirmed
3.	Loss of nutrition	5,000/-	5,000/-	Confirmed
4.	Loss of damage and clothes	1,000	1,000	Confirmed
5.	Loss of medical expenses	5,000	5,000	Confirmed
6.	Loss of future income, pain and sufferings	1,00,000	85,000	Reduced



7.	Loss of Permanent disability	1,00,000	85,000	Reduced
8.	Loss of future Income	1,00,000	85,000	Reduced
Total compensation		4,12,000	3,67,000	Rs.45,000

12.In fine, the claimants are entitled for a sum of Rs.3,67,000/- with interest at 7.5% per annum, as compensation from the date of filing of the claim petition till the date of realization. The appellant/Transport Corporation is directed to deposit the award amount with accrued interest and costs if not already deposited, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit being made, the third respondent is permitted to withdraw a sum of Rs.1,83,500/- and the third and fourth respondent are directed to withdraw a sum of Rs.91,750/- each, if not already withdrawn.

13.In the result, the award dated 10.08.2016 in M.C.O.P.No.52 of 2011 on the file of the Motor Accidents Claims Tribunal/Sub Court, Padmanabhapuram, is hereby modified and the Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To
The Motor Accident Claims Tribunal/
Sub Court,
Padmanabhapuram.

Copy to:
The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court,
Madurai.(2 Copies)

+1cc to Mr.P.Prabhakaran, Advocate, SR.No. 59727

+1cc to Mr.J.Joh Jeyakumar, Advocate, SR.No. 59828

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