

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.02.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.2020 of 2013
and
M.P.No.1 of 2013

Managing Director,
Tamil Nadu State Transport Corporation
(Division) Ltd., Villupuram District. .. Appellant/Respondent

Vs.

Mahadevan .. Respondents/Claimant

Prayer: This petition is filed Under Section 173 of Motor Vehicles Act 1988 to set aside the order of the lower Court dated 29.08.2012 made in M.C.O.P.No.336 of 2008 on the file of the Motor Accident Claims Tribunal, Sub-Court, chidambaram.

For Appellant : Mr.C.S.K. Sathish Kumar

JUDGMENT

This petition has been filed by the appellant/Transport Corporation against the order of the lower Court dated 29.08.2012 made in M.C.O.P.No.336 of 2008.

2.The necessary relevant facts are stated hereunder to find out whether the appellant is entitled for relief as prayed in this appeal.

3.The case of the claimant/respondent is that on 31.08.2008 at about 12.00 p.m when the respondent was walking at Kumbakonam Main road at Nandieswaram village, a bus belonging to the appellant Corporation bearing Registration No:TN-32-N-1901 came in the opposite direction in a rash and negligent manner and knocked the respondent. Due to the impact he sustained grievous injuries. Hence, he filed a claim petition before the Tribunal seeking Rs.2,00,000/- as compensation for the injuries sustained in the accident. The accident occurred due to the rash and negligent driving of the driver of the bus. At the time of

accident he was aged 32 years and he was a agriculturist and driver. Thereby he was earning Rs.7,000/- per month. He filed a claim petition before the Tribunal seeking Rs.2,00,000/- as compensation for the injuries sustained in the accident from the respondent/Transport Corporation.

4.On the other hand by filing counter, the appellant/Transport Corporation contends the claim of the respondent and the manner in which the accident. The claim of the respondent about the age, avocation and income of the respondent is denied. The compensation claim of the respondent is exorbitant. Hence, the appellant sought for allowing this appeal.

5.Before the Tribunal, the claimant was examined as P.W.1 and the Doctor who issued Disability certificate was examined as P.W.2 and the claimant produced documents Ex.P.1 to Ex.P.9 to prove his claim. On the side of the respondents, one witness was examined but no documents was let in. On the basis of evidence available on record, the Tribunal concluded that the negligence on the part of the driver of the bus is the cause for the accident and awarded a sum of Rs.1,07,250/- as compensation to the claimant.

6.Aggrieved over the said finding of the Tribunal, the appellant/Transport Corporation has come forward with the present appeal.

7.The learned counsel for the appellant/Transport Corporation erred in awarding huge amount as compensation to the injured. He would further contend that the injuries sustained by the respondent are simple in nature but the respondent, exaggerated the same as permanent disability in order to claim huge amount as compensation. He further submitted that the respondent himself has claimed Rs.40,000/- towards the head pain and suffering, but the Tribunal has awarded Rs.1,00,000/- towards the same, which is not fair.

8.Per Contra the learned counsel for the respondent/claimant submitted that the accident occurred due to the inattentive attitude of the driver of the bus. In any event, the compensation awarded by the Tribunal is very low, when compared to the injuries sustained in the accident. Hence, he prays to enhance the compensation.

9. With regard to negligence aspect, Ex.P.1/F.I.R and the deposition of R.W.1/ bus driver reveals that the claimant was not attentive while crossing the road. From the medical records the Tribunal observed that the injuries sustained by the respondent will occur due to the rash and negligent driving of the bus. Based on the above materials and evidence, the Tribunal concluded that the driver of the bus as well as the claimant is also responsible for the accident and fixed 25% negligence on the part of the claimant and 75% on the part of the bus driver. Therefore, this Court is of the view that the award passed by the Tribunal with regard to negligence aspect is perfectly valid in the eye of law and does not warrant interference by this Court and the same are confirmed as such.

10. With regard to quantum, based on the avocation of the injured, the Tribunal fixed the monthly income of the injured as Rs.6,000/- and due to the accident he may not be able to go for work for atleast 2 months. Hence, Rs.12,000/- is awarded towards loss of income. Based on Exs.P.6 & 7 Rs.5,000/- and Rs.10,000/- is awarded towards Transportation Expenses and Extra Nourishment. Considering the other relevant materials, the Tribunal has awarded Rs.10,000/- and Rs.6,000/- towards Attender charges and Future Medical Expenses. Apart from this Rs.1,00,000/- is awarded towards the head Pain and sufferings. Thus, Rs.1,43,000/- is awarded as total compensation.

11. In view of the above, this Court while re-appreciating the observed that certain heads require modification and they are modified accordingly. With regard to pain and suffering the claimant himself has claimed Rs.40,000/- only but, the Tribunal awarded Rs.1,00,000/- Hence the same is reduced to Rs.40,000/-. The Tribunal has awarded Rs.10,000/- towards attender charges and Rs.5,000/- towards Transportaion, but considering the period of treatment and the nature of injuries sustained by him, the same is enhanced to Rs.15,000/- and Rs.12,000/- respectively. No amount was awarded towards Damages to clothes hence Rs.1,000/- is awarded towards damage to clothes. The Tribunal has not considered the disability certificate issued by P.W.2. Hence the same is considered by this Court and taking 10% as disability and determined 1,000/- per percentage and quantified Rs.10,000/- (Rs.1,000 x 10%) towards the head Disability. Thus, the amount awarded by this Court is as follows:

Particulars	Amount Awarded by the Tribunal	Amount awarded by this Court
Loss of Income	Rs.12,000/-	Rs.12,000/-
Transportation	Rs.5,000/-	Rs.12,000/-
Extra Nourishment	Rs.10,000/-	Rs.10,000/-
Damage to cloths and articles	-Nil-	Rs.1,000/-
Future Medical Expenses	Rs.6,000/-	Rs.6,000/-
Attender Charges	Rs.10,000/-	Rs.15,000/-
Pain and sufferings	Rs.1,00,000/-	Rs.40,000/-
Permanent Disability	-Nil-	Rs.10,000/-
Total	Rs.1,43,000/-	Rs.1,06,000/-

12. After deducting 25% (Rs.1,06,000/- x 25% = Rs.26,500/-) towards contributory negligence, the claimant is entitled to receive Rs.79,500/- (Rs.1,06,000 - Rs.26,500/-) as compensation.

13. With the above said modification this appeal is partly allowed. The appellant/Transport Corporation is directed to deposit the modified amount of Rs.79,500/- with 7.5% p.a from the date of petition till the date of realization, less the amount already deposited if any, within a period of 8 weeks from the date of receipt of a copy of this Judgment. After making such deposit the claimant/respondent is permitted to withdraw the amount, after deducting the amount already withdrawn if any, by making proper application before the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

//True copy//

Sub Assistant Registrar

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To

The Motor Accident Claims Tribunal,
Sub-Ordinate Judge, Chidambaram.

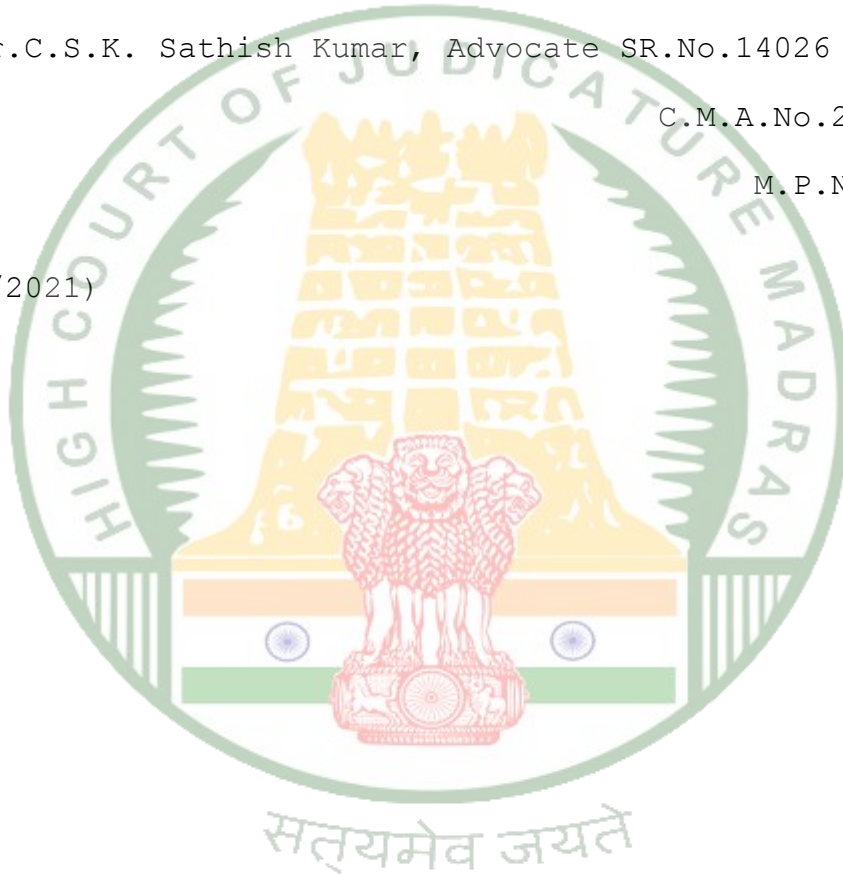
Copy To

The Section Officer,
V.R Section,
High Court, Madras.

+1cc to Mr.C.S.K. Sathish Kumar, Advocate SR.No.14026

C.M.A.No.2020 of 2013
and
M.P.No.1 of 2013

RSV(CO)
GMY(06/05/2021)



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