

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2020

C O R A M

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.Nos.2556 of 2013 & 3077 of 2014
and
CMP Nos.1 of 2014 & 1 of 2015

C.M.A. No.2556 of 2013

S. Chinnadurai ...Appellant/Petitioner

Versus

The Managing Director,
Tamil Nadu State Transport Corporation,
Villupuram. ...Respondent/Respondent

C.M.A. No.3077 of 2014

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

Versus

S. Chinnadurai ...Respondent/Petitioner

Common Prayer: Civil Miscellaneous Appeal filed against the order and decree dated 03.04.2012 made in M.C.O.P.No.268 of 2010 on the file of the Motor Accident Claims Tribunal, Principal Subordinate Judge, Vridhachalam.

For Appellant :Mr.S. Udhayakumar
For Respondent :Mr.S.V. Vasanthakumar
(in CMA 2556 of 2013)

For Appellant : Mr.S.V. Vasanthakumar
For Respondent : Mr.S. Udhayakumar
(in CMA 3077 of 2014)

COMMON JUDGMENT

The petitioner before the tribunal has preferred the appeal in C.M.A.No.2556 of 2013 seeking for enhancement of compensation and the respondent/the Transport Corporation before the tribunal

has preferred the appeal in C.M.A.No.3077 of 2014 against the compensation those who have filed the aforesaid appeals against the Judgment and decree dated 03.04.2012 made in M.C.O.P.No.268 of 2010 on the file of the Motor Accidents Claims Tribunal, Principal Subordinate Judge, Vridhachalam.

2. Since facts of the case are one and the same in both appeals, both appeals are disposed of by this Common Judgment and for the convenience, the parties are referred to in this appeal as stood before the Tribunal.

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

On 23.05.2010, the claimant was travelling towards Valliyam Village from Karuveppilankurichi in the respondent's bus bearing Registration No.TN.32-N-1703. While it reached near Karmangudi bus stop, the bus was driven in rash and negligence manner. When it ahead of depth area of the road, the petitioner was thrown out of the bus and its wheel ran over his left leg and sustained crush injury on left leg and multiple fracture on his left leg and injuries over both arms and forehead. Immediately, he was admitted at Government Hospital, Vridhachalam and referred to Government Head quarters Hospital and continued further treatment in the Government General Hospital, Pondy. In view of the serious injuries, caused by the accident in the Transport Corporation bus, the petitioner has claimed a sum of Rs.5,00,000/- (Rupees Five Lakh Only) by way of Claim petition in M.C.O.P No.268 of 2010 whereby the Tribunal has awarded compensation as prayed for, i.e. Rs.5,00,000/- (Rupees Five Lakh Only) even though the compensation was arrived for Rs.9,64,560/- (Rupees Nine Lakh Sixty Four Thousand Five Hundred and Sixty Only) inclusive various heads by the Tribunal.

4. Aggrieved by the aforesaid award, both the claimant and the respondent/Transport Corporation have preferred the appeals.

5. The learned counsel for the claimant would submit that the Tribunal, after perusal of entire oral and documentary evidence placed on record, has arrived the quantum of compensation of Rs.9,64,560/- (Rupees Nine Lakh Sixty Four Thousand Five Hundred and Sixty Only). However, as the claim is restricted to Rs.5,00,00/- (Rupees Five Lakh Only) by the claimant, the Tribunal has awarded Rs.5,00,000/- only (Rupees Five Lakh Only) as prayed for even though the petitioner is entitled to Rs.9,64,560/- (Rupees Nine Lakh Sixty Four Thousand Five Hundred and Sixty Only) for grievous injuries sustained by the petitioner.

6. The learned counsel for the Transport Corporation would submit that the award of Rs.5,00,000/- (Rupees Five Lakh Only) to the petitioner as prayed for is highly excessive and

exorbitant, the petitioner seeking for a compensation arrived at by the Tribunal as Rs.9,64,560/- (Rupees Nine Lakh Sixty Four Thousand Five Hundred and Sixty Only) is not sustainable. Further, he would contend that the tribunal has awarded a sum of Rs.5,00,000/- erroneously without considering the contributed negligence on the part of the petitioner and the accident occurred while the petitioner tried to board the moving bus and thereby he fell down on the road and wheel of the bus ran over on his leg.

7. Heard the learned counsel for the appellant and the learned counsel for the respondent in both petition and perused the available materials on records.

8. The petitioner was examined as P.W.1 and the driver of the bus was examined as R.W.1. Ex.P1. to Ex.P16 were marked on the side of the petitioner. There is no exhibit was marked by the respondent.

9. On perusal of the record, the petitioner has claimed a sum of Rs.5,00,000/- for injuries caused by the Transport Corporation Bus. During the Trial, the tribunal has confirmed the factum of the accident and manner of the accident occurred due to driving in rash and negligence manner of the bus driver after considering the oral evidence of P.W.1/petitioner and the R.W.1/Driver of the Transport Corporation and no negligence fixed on the claimant. According to P.W.2/Doctor, the permanent disability is fixed 75% considering two fracture injuries in petitioner's left leg and disfigurement, vide Ex.P.15. However, the Tribunal after perused of the oral and documentary evidence, held that the petitioner's permanent disability is fixed as 100%, on the basis of the decision of the Hon'ble Supreme Court reported in 2010(12) SCALE 265, wherein the petitioner's income is fixed at Rs.9,000/- (Rupees Nine thousand only) as agricultural coolie per month. However, the Tribunal had fixed his notional income as Rs.4,500/- (Rupees Four thousand and Five hundred only) per month having considered the age of the petitioner as 27 years, vide Ex.P.3/A.R. copy, and nature of the work of the petitioner at the time of the accident. In view of the age of the petitioner was 27 years at the time of the accident, the tribunal has applied correct multiplier of 17 and calculated the loss of future earnings at Rs.9,18,000/- as per the details given below:

$$\text{" Rs.4500 X 12 X 100\% X 17 = Rs.9,18,000/-"}$$

Other than the loss of future earnings, Loss of Income was fixed at Rs.13,500/-, Pain and Sufferings at Rs.10,000/- Medical Expenses to an extent of Rs.15,060/-, attender charges as Rs.3,000/- and ambulance and transport charges at Rs.5,000/- were arrived as compensation to be paid. Totally, the compensation of Rs.9,64,560/- (Rupees Nine Lakh Sixty Four Thousand Five Hundred and Sixty Only) was arrived at to be

entitled by the petitioner. However, the tribunal has passed an award for Rs.5,00,000/- (Rupees Five Lakh Only) only as the claim was restricted to Rs.5,00,000/- (Rupees Five Lakh Only) in the claim petition filed by the petitioner.

10. After hearing the learned counsel for the appellant and having Considered the above facts and circumstances of this case, this court is inclined to accept the findings of the Court below and modify the award amount to be entitled by the appellant as follows:

SL. No.	Particulars	Amount (in Rs.)
1	Loss of future earning capacity as decided by the Tribunal	9,18,000.00
2	Transport Expenses	5000.00
3	Extra-nourishment	5000.00
4	Pain, shock and Sufferings	20,000.00
5	Attender Charges	2,000.00
6	Medical Expenses	15,000.00
Total Amount		9,65,000.00

11. The transport Corporation is directed to deposit the modified award amount of Rs.9,65,000/- (Rupees Nine Lakh Sixty Five Thousand Only) together with interest @7.5% p.a to the credit of M.C.O.P. No.268 of 2010, on the file of the Motor Accident Claims Tribunal, Principal Subordinate Judge, Vridhachalam, from the date of petition till the date of deposit, after deducting already deposited amount if any, within a period of eight weeks from the date of receipt of copy of this order. and the petitioner is permitted to withdraw the modified award amount without filing any formal petition from the Court below.

12. In the result, the award passed by the Tribunal is hereby modified. Accordingly, C.M.A. No.2556 of 2013 filed by the appellant/claimant is allowed and C.M.A. No.3077 of 2017 filed by the Transport Corporation is dismissed. No Costs. Consequently, connected miscellaneous petitions are closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

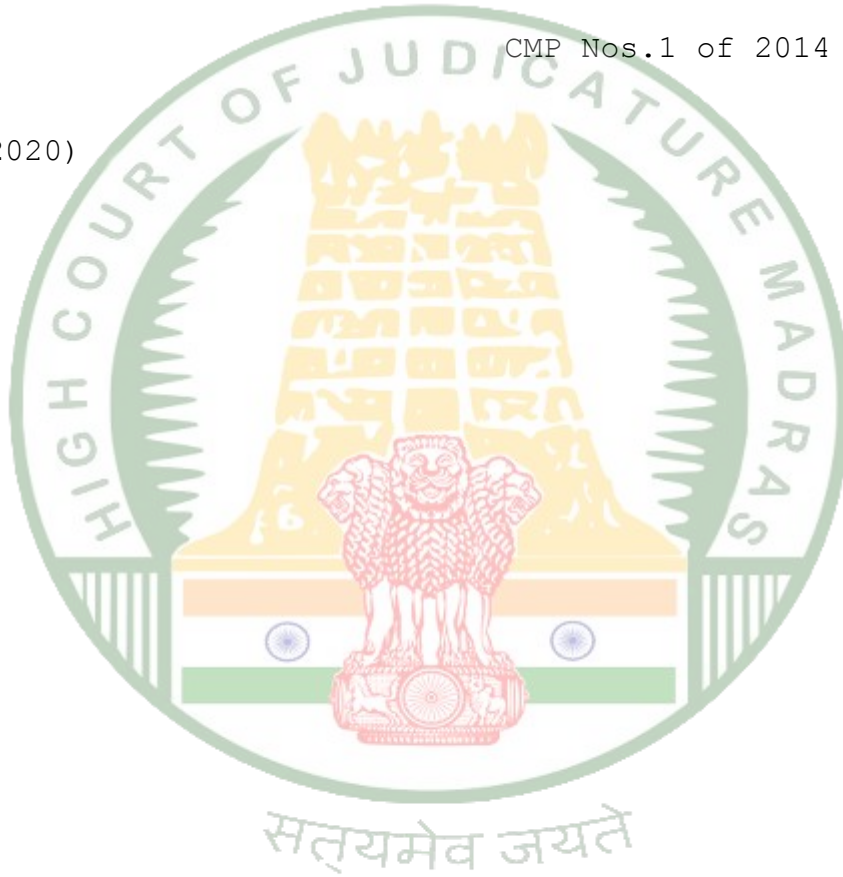
To

1.The Motor Accident Claims Tribunal,
Principal Subordinate Judge, Vridhachalam.

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

C.M.A.Nos.2556 of 2013 & 3077 of 2014
and
CMP Nos.1 of 2014 & 1 of 2015

NMI (CO)
SP(19/08/2020)



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