

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.02.2020

CORAM:

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.715 of 2011

A. Saravanan Appellant/Claimant

Vs.

1. Pradibhai M.Parmar

2. The National Insurance Company Ltd.,
represented by its Divisional Office-I
L.R.N. Complex, Salem - 7.

3. The Managing Director,
Tamil Nadu State Transport corporation,
(Salem Division-I) Ltd.,
No.12, Ramakrishnan Road, Salem -7.

..... Respondents/Respondents

(1st & 2nd Respondent were set exparte
Hence notice in the CMA. May be dispensed with)

Prayer: Civil Miscellaneous Appeal filed under section 173 of Motor Vehicles Act, 1988 to set aside the Judgment and Decree dated 04.01.2011 made in M.C.O.P.No.562 of 2006 on the file of the Motor Accident Claims Tribunal/Additional Sub Court - II, Salem.

For Appellant : Mr.R. Marudhachalamurthy

For Respondent-3 : Mr.D. Venkatachalam
R1 & R2 - Set Exparte

J U D G M E N T

This Appeal has been filed by the appellant/claimant against the dismissal award passed in M.C.O.P.No.562 of 2006 dated 04.01.2011 by the Motor Accident Claims Tribunal/Additional Sub Court - II, Salem.

2. Brief facts of the case is as follows:

On 02.02.2005 at about 11.00 p.m when the appellant/claimant was travelling in a bus bearing Registration No. TN-27-N-1351 from Salem to Pallaipalayam near V.N. Palayam

Pondi, a lorry bearing Registration No.G-J-03-V-9279 came from the opposite direction in a rash and negligent manner and hit against the bus. As a result of which the appellant sustained injuries all over the body. Hence, he filed claim petition before the Tribunal seeking Rs.2,00,000/- as compensation. As there were no valid evidence on the part of the claimant, the Tribunal dismissed the petition.

3.Challenging the dismissal award passed by the Tribunal, the appellant has filed the present Civil Miscellaneous Appeal.

4.The learned counsel appearing for the appellant/Claimant would contend that the Tribunal erred in dismissing the application, inspite of disability certificate and other medical records were produced by the claimant to substantiate the claim of the appellant.

5.The learned counsel appearing for the 3rd respondent/Transport Corporation submitted that the fault is on the part of the driver of the lorry hence, the police filed F.I.R against the driver of the lorry only. The learned counsel also prayed to exonerate them from the liability.

6.On a perusal of the award passed by the Tribunal, it is seen that the F.I.R was registered against the driver of the lorry and the driver of the bus lodged the complaint Ex.P.1/Copy of the F.I.R. The Tribunal further observed that it was head on collision of both vehicles in which both vehicles got damaged and unfortunately the driver of the lorry was succumbed to injuries. Hence, the Tribunal concluded that negligence aspect is on the part of the both sides of the vehicle involved in the accident. Relying upon the same, this Court is inclined to fasten 50% of the liability on the part of the insurer of the lorry/second respondent and 50% on the part of the Transport corporation/ third respondent.

7.The Tribunal further held that in these type of cases to prove that the appellant was travelled in the bus, bus ticket should be produced or atleast he could have produced accident register to substantiate the claim. Hence, in the absence of such material record before the Tribunal, the Tribunal had dismissed the petition.

8.But, the Accident Register was produced before this Court, to show that the said injured/claimant was travelled in the said bus. Hence, this Court is inclined to award reasonable compensation amount, based on the available materials on record. With regard to interest portion, the claimant is entitled to 6% interest from the date of petition till the date of realisation.

9.Apart from this, it is seen that the M.C.O.P. was filed

in the year 2006, hence this Court is not inclined to remit back the matter to the Court below and considering the evidence and documents produced before this Court, a reasonable amount is awarded as compensation.

10. This Court on taking note of the avocation of the injured his monthly income of the injured is fixed as Rs.3,000/- and considering the nature of injuries he would not have gone for his job atleast for 3 months and thereby Rs.9,000/- is fixed as loss of income. P.W.2/Dr.A.D.Sampathkumar who has examined the appellant had assessed the disability of the claimant at 30% and had issued Ex.P.4/Disability Certificate to that effect. Considering the year of accident, Rs.2,000/- per percentage is determined and thereby quantified Rs.60,000/- for disability sustained. Apart from this Rs.5,000/- each is awarded towards Transportation and Extra Nourishment. Apart from this Considering Exs.P.2 and 3 Rs.1,000/- ,Rs.10,000/- and Rs.2,000/- is awarded towards Medical expenses, pain and sufferings and attendant charges. Thus, the total compensation was arrived at Rs.92,000/-, which is hereby tabulated:

Particulars	Amount
Loss of earnings	Rs.9,000/-
Disability	Rs.60,000/-
Medical Expenses	Rs.1,000/-
Transport	Rs.5,000/-
Extra Nourishment	Rs.5,000/-
Pain and sufferings	Rs.10,000/-
Attendant charges	Rs.2,000/-
Total	Rs.92,000/-

12. In the result, this appeal is allowed. No costs. The second respondent/Insurance Company and the third respondent/Transport Corporation shall equally share the compensation amount and deposit the same with interests and costs, as awarded by the Claims Tribunal, less the amount already deposited, if any, within a period of eight weeks, from the date of receipt of a copy of this judgment. On such deposit being made, the appellant is directed to withdraw the share amount. No costs.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

smn

To

The II Subordinate Judge, Salem.

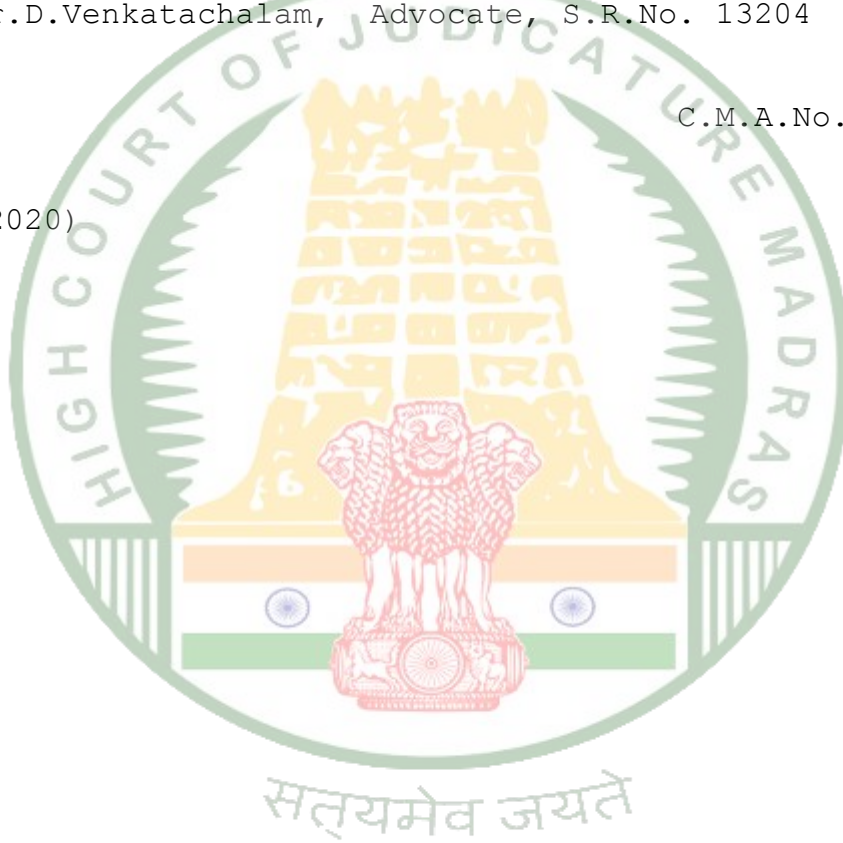
Copy To

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

+1cc to Mr.M.Guruprasad, Advocate, S.R.No. 13482
+1cc to Mr.D.Venkatachalam, Advocate, S.R.No. 13204

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SSI (CO)
GN(27/08/2020)



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