

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.02.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

CMA.No.3256 of 2013

Annamalaisamy

.. Appellant/Petitioner

vs.

The Managing Director,
Tamil Nadu State Transport Corporation Ltd,
Ramakrishna Road,
Salem - 636 007.

.. Respondent/Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Decree and Judgment dated 29.10.2011 made in M.C.O.P.No.471 of 2009 on the file of Motor Accident Claims Tribunal, Additional Special Judge, Krishnagiri.

For Appellant : Mr.C.Prabakaran

For respondent : Mr.D.Venkatachalam

J U D G M E N T

The appellant is the claimant in MCOP.No.471 of 2009 on the file of the Motor Accident Claims Tribunal, Additional Special Judge, Krishnagiri. He filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 praying to award compensation of Rs.3,00,000/- for the injuries sustained by him in a road accident that took place on 05.08.2008.

2. The case of the appellant / claimant is that on 05.08.2008, at about 19.00 hours, he boarded a bus bearing Registration No.TN 29 N 1643 to go from Hosur to Krishnagiri and when the bus stopped at Collectorate bus stop, he was getting down from the bus and at that time, the driver of the bus suddenly moved the bus in a rash and negligent manner, as a result of which, he fell down from the bus and sustained injuries. The specific contention of the appellant / claimant is that the accident took place due to the rash and negligent driving of the driver of the said bus. Therefore, he filed claim petition seeking compensation for the injuries sustained by him.

3. The learned Additional Special Judge, Krishnagiri vide Judgment and Decree dated 29.10.2011, calculated the total compensation as Rs.90,000/- together with interest at the rate of 9% per annum and fixed the negligence in the ratio 50:50 on the part of the appellant / claimant and the respondent. Challenging the said award, the claimant has come out with the present appeal, seeking enhancement of compensation.

4. The learned counsel appearing for the appellant / claimant would contend that the accident occurred since the conductor blew the whistle without properly alighting the passengers and since the driver drove the bus in a rash and negligent manner. He relied on the First Information Report (Ex.P1) and contended that negligence is only on the part of the driver and hence 50% negligence fixed on the appellant / claimant should be set aside. He also submitted that even the conductor of the bus was not examined on the side of the respondent. He further prayed for enhancing compensation under the head pain and sufferings. He also prayed for awarding compensation under medical expenses, future medical expenses, transportation charges, extra nourishment, loss of articles and damage to clothes.

5. The learned counsel appearing for the respondent would submit that the Tribunal after considering both oral and documentary evidences in a proper perspective, fixed the negligence on the part of the appellant / claimant and respondent in the ratio 50 : 50 and awarded compensation, which is not meagre and prayed for dismissal of the appeal.

6. Heard the learned counsels appearing for the appellant and respondent and perused the materials available on record.

7. In the counter filed by the respondent before the Tribunal, the respondent has stated that, on 05.08.2008, at about 19.00 hours, the driver of the bus moved the bus slowly and carefully keeping to the left side of the road to stop the bus at the Bus Stop and the appellant / claimant had suddenly got down from the moving bus and therefore, he fell down and hence the accident. However, the driver namely, S.Prabu (RW1) in his evidence had submitted that only after all the passengers got down from the bus, the conductor blew the whistle and he started to move the bus and thereafter, the appellant / claimant got down from the bus and fell down. The above two stands taken by the respondent are contradictory. The appellant / claimant in his deposition had contended that the conductor blew the whistle and then only the driver started the bus. In such circumstances, this Court is of the opinion that the conductor and the driver have to be vigilant as to whether all the passengers got down from the bus or not. It is to be noted that the appellant / claimant was aged 62 years on the date of

the accident. While that being the case, 50% negligence cannot be fastened on the claimant. However, it can be said that there is a slight negligence on the part of the appellant / claimant. Atleast the appellant / claimant could have informed the conductor that he is getting down from the bus. Hence, the finding of the Tribunal in respect of fixing 50% negligence on the part of the appellant / claimant is modified and 10 % negligence is fixed on the part of the appellant claimant. The negligence is fixed on the respondent at 90%.

8. As far as the quantum of compensation is concerned, eventhough the appellant / claimant took treatment in the Government Hospital, he would have incurred some expenses under the heads transportation, extra nourishment and attender's charges. Considering the year of the accident, Rs.5,000/-, Rs.5,000/- and Rs.5,000/- are awarded towards transportation, extra nourishment and attender's charges respectively. The appellant / claimant is aged 62 years and had suffered a fracture of left shoulder accromian bone. Under such circumstances, Rs.10,000/- awarded towards pain and sufferings is enhanced to Rs.15,000/-. All the other heads awarded by the Tribunal are reasonable and they are hereby confirmed. Thus the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)
1	Temporary Disability	70,000	70,000
2	Pain and sufferings	10,000	15,000
3	Loss of amenities	10,000	10,000
4	Transportation	Nil	5,000
5	Extra Nourishment	Nil	5,000
6	Attender's charges	Nil	5,000
	Total	Rs.90,000/-	Rs.1,10,000/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.90,000/- is hereby enhanced to Rs.1,10,000/- together with interest at the rate of 9% per annum from the date of petition till the date of deposit. The appellant / claimant is directed to pay necessary Court fee, if any, on the enhanced compensation. The respondent is directed to deposit 90% of the enhanced award amount now determined by this Court along with proportionate interest and costs, less the amount already

deposited if any, to the credit of MCOP.No.471 of 2009 on the file of the Additional Special Judge / Motor Accident Claims Tribunal, Krishnagiri within a period of six weeks from the date of receipt of a copy of this Judgment. On such deposit, the appellant / claimant is permitted to withdraw the same along with interest and costs, less the amount if any, already withdrawn. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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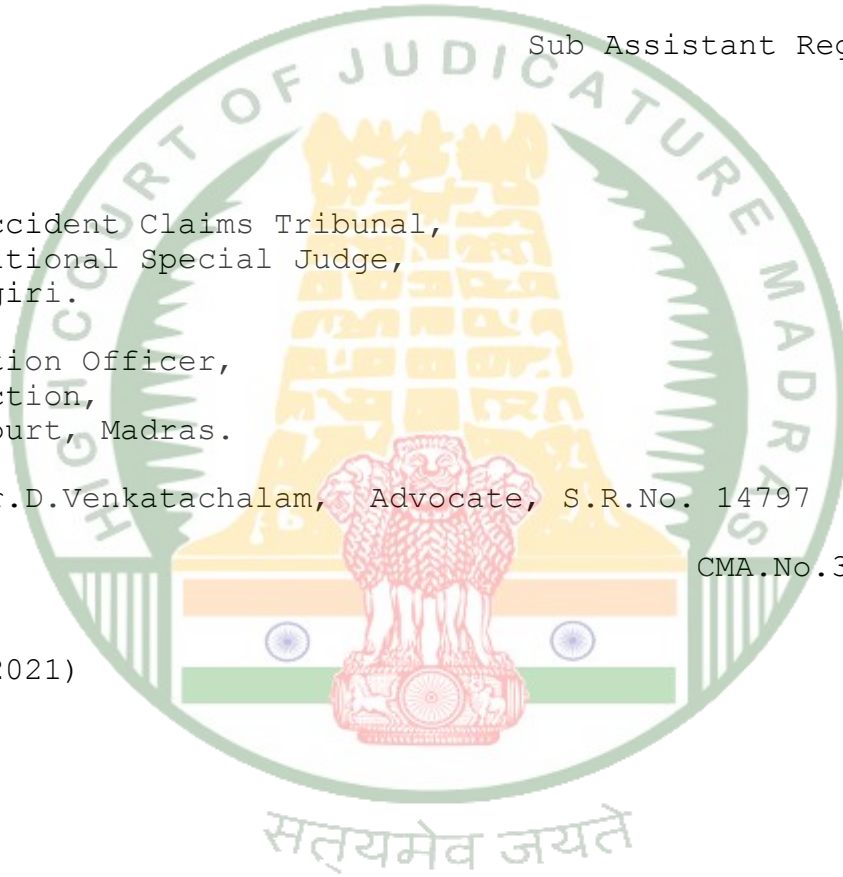
1.Motor Accident Claims Tribunal,
The Additional Special Judge,
Krishnagiri.

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

+1cc to Mr.D.Venkatachalam, Advocate, S.R.No. 14797

CMA.No.3256 of 2013

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