

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. Nos.3614 & 3615 of 2013
and M.P.Nos. 1 & 1 of 2013

The General Manager,
Tamil Nadu State Express Transport Corporation Ltd.,
Thiruvalluvar House, Pallavan Salai,
Chennai 600 002. ... Appellant/ Respondent
in
both the appeals
Vs.

Mohammed Raffiq ... Respondent/ Petitioner
in C.M.A.No.3614/2013

Mohammed Sadiq ... Respondent/ Petitioner in
C.M.A.No.3615/2013

Common Prayer: These Civil Miscellaneous Appeals are filed under
Section 173 of Motor Vehicles Act, 1988, against the common
award dated 25.03.2013, made in M.C.O.P. Nos.274 of 2009 & 1213
of 2010, on the file of the Chief Judicial Magistrate Court,
(Motor Accident Claims Tribunal), Krishnagiri.

(In both appeals)

For Appellant : Mr. K.J. Sivakumar

For Respondent : No appearance

C O M M O N J U D G M E N T

These matters are heard through "Video Conferencing".

These appeals have been filed against the common judgment
and decree dated 25.03.2013, made in M.C.O.P. Nos.274 of 2009 &
1213 of 2010, on the file of the Chief Judicial Magistrate
Court, (Motor Accident Claims Tribunal), Krishnagiri.

2.Both the appeals arise out of the same accident and common
award. Hence, they are disposed of by this common judgment.

3.The appellant in both the appeals is the respondent-
Transport Corporation in M.C.O.P. Nos.274 of 2009 & 1213 of

2010, on the file of the Chief Judicial Magistrate Court, (Motor Accident Claims Tribunal), Krishnagiri. The respondent in both the appeals filed the said claim petitions, claiming a sum of Rs.7,00,000/- and Rs.10,00,000/- respectively as compensation for the injuries sustained by them in the accident that took place on 19.05.2008.

4. According to the respondent in both the appeals, on the date of accident, the respondent in C.M.A.No.3615 of 2013 was riding Motorcycle bearing Registration No.TN 29 AB 2878 along with the respondent in C.M.A.No.3614 of 2013 as pillion rider from Krishnagiri to Dharmapuri. While proceeding in Kaveripattinam to Krishnagiri NH road, the driver of the Bus bearing Registration No. TN-01-N-6982 belonging to the appellant-Transport Corporation drove the same in a rash and negligent manner in the opposite direction, dashed against the Motorcycle in which the respondent in both the appeals traveled and caused the accident. In the accident, the respondent in both the appeals sustained grievous injuries and thus, filed the claim petitions, claiming compensation against the appellant as owner of the offending vehicle.

5. The appellant-Transport Corporation filed separate counter statements and denied all the averments made by the respondent in their respective claim petitions. According to the appellant-Transport Corporation, the accident occurred due to rash and negligent riding by respondent in C.M.A.No.3615 of 2013, rider of the Motorcycle, who dashed on the front of the Bus and caused the accident. FIR was also filed against the rider of the Motorcycle only. The driver of the Bus belonging to the appellant Transport Corporation was not negligent. Hence the appellant is not liable to pay any compensation to the respondent in both the appeals. In any event, the respondent in both the appeals have to prove their age, avocation and income, injuries suffered, disability sustained and treatment taken to claim compensation and prayed for dismissal of both the claim petitions.

6. Before the Tribunal, the respondent in both the appeals examined themselves as P.W.1, P.W.2 respectively, examined Dr.Devendiran as P.W.3, eyewitness as P.W.4 and marked 15 documents as Exs.A1 to A15. The appellant examined the driver of the Bus as R.W.1, but did not let in any documentary evidence.

7. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the Bus belonging to the appellant and directed the appellant as owner of the said vehicle to pay a sum of Rs.6,11,310/- and Rs.6,35,115/- as compensation to the respondent in both the appeals respectively.

8. Against the said common award dated 25.03.2013, made in M.C.O.P. Nos.274 of 2009 & 1213 of 2010, the appellant-Transport Corporation has come out with the present appeals.

9. The learned counsel appearing for the appellant-Transport Corporation contended that the appellant proved that accident occurred only due to rash and negligent driving by rider of the Motorcycle by examining the driver of the Bus as R.W.1. The Tribunal failed to properly consider the evidence of R.W.1. The respondent in both the appeals failed to prove that they suffered functional disability and lost their earning power. The Tribunal without giving any reason, erroneously applied multiplier method for awarding compensation. In any event, the total compensation awarded by the Tribunal is excessive and prayed for setting aside the common award of the Tribunal.

10. Though the respondent in both the appeals were served and their names are printed in the cause list, there is no representation for them either in person or through counsel.

11. Heard the learned counsel appearing for the appellant-Transport Corporation and perused the materials available on record.

12. From the materials on record, it is seen that it is the contention of the respondent that while the respondent in both the appeals were proceeding in Bajaj Discover Motorcycle and rider keeping cautiously on the left side of the road following rules, the Bus belonging to the appellant-Transport Corporation driven by its driver in a rash and negligent manner, coming in the opposite direction, dashed against the Motorcycle in which the respondent in both the appeals travelled. Due to the said impact, the respondent in both the appeals who were rider and pillion rider, fell down and sustained grievous injuries. To prove the same, they examined themselves as P.W.1 and P.W.2 and examined P.W.4 - eye witness and marked FIR as Ex.A1. The appellant has examined driver of the Bus as R.W.1. The respondent in both the appeals have examined P.W.4 independent eye witness, while the appellant did not examine any eye witness, apart from driver of the Bus. Even though the FIR was registered against the rider of the Motorcycle, the same was registered based on the complaint given by the driver of the Bus, who is an interested person. The Tribunal considering the evidence of P.W.4, held that accident occurred only due to rash and negligent driving by the driver of the Bus. There is no error in the finding of the Tribunal, in the absence of any independent eye witness by the appellant.

13.As far as the quantum of compensation in both the appeals is concerned, the respondent in both the appeals have not proved that they suffered functional disability and lost their earning capacity, due to the accident. In the absence of any material evidence with regard to functional disability and loss of earning power, the Tribunal without giving any reason, erroneously adopted multiplier method and granted compensation. The same is liable to be set aside. The respondent in both the appeals are entitled to compensation only by adopting percentage method. P.W.3 Doctor assessed that the respondent in C.M.A.Nos.3614 and 3615 of 2013 suffered 60% and 65% disability respectively. The Tribunal erroneously reduced the percentage of disability to 55% and 60%, without assigning any reason. The appellant has not let in any contra evidence to the evidence of P.W.3 Doctor. The respondent in both the appeals are entitled to compensation for 60% and 65% disability respectively, as assessed by P.W.3 Doctor and disability certificate. Hence, the accident is of the year 2008. Hence, the amount awarded by the Tribunal towards permanent disability is modified to Rs.1,20,000/- [Rs.2,000/- x 60%], at the rate of Rs.2,000/- per percentage for 60% disability for the respondent in C.M.A.No.3614 of 2013 and Rs.1,30,000/- [Rs.2,000/- x 65%], at the rate of Rs.2,000/- per percentage for 65% disability, for the respondent in C.M.A.No.3615 of 2013. The respondent in C.M.A.No.3614 of 2013 contended that at the time of accident, he was working as a Sales Executive in HDFC Bank and was earning a sum of Rs.8,000/- per month. The respondent in C.M.A.No.3615 of 2013 contended that at the time of accident, he was working as a Chief Mechanic in Airtel Company and was earning a sum of Rs.10,000/- per month. They failed to substantiate the same. In the absence of any material evidence, the Tribunal fixed a sum of Rs.4,000/- per month as notional income of the respondent in both the appeals. The accident is of the year 2008. The amount fixed by the Tribunal is meagre. A sum of Rs.6,500/- per month is fixed as notional income of respondent in both the appeals. Due to the injuries sustained, disability suffered and treatment taken, the respondent in both the appeals would not have worked atleast for a period of 4 months. Hence, the amount awarded by the Tribunal towards loss of income to the respondent in both the appeals is enhanced to Rs.26,000/- [Rs.6,500/- x 4 months]. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same are hereby confirmed. Thus, the compensation awarded by the Tribunal in both the appeals is modified as follows:

C.M.A.No.3614 of 2013 -

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Permanent Disability	4,48,800/-	1,20,000/-	Reduced
2.	Extra nourishment	5,000/-	5,000/-	Confirmed
3.	Attendant charges	5,000/-	5,000/-	Confirmed
4.	Pain and suffering	10,000/-	10,000/-	Confirmed
5.	Transportation	5,000/-	5,000/-	Confirmed
6.	Loss of income	5,000/-	26,000/-	Enhanced
7.	Damages to clothes	1,000/-	1,000/-	Confirmed
8.	Medical bills	1,31,511/-	1,31,511/-	Confirmed
	Total	6,11,311/- rounded off to 6,11,310/-	3,03,511/- rounded off to 3,03,510/-	Reduced by Rs.3,07,800/-

C.M.A.No.3615 of 2013-

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Permanent Disability	4,89,600/-	1,30,000/-	Reduced
2.	Extra nourishment	5,000/-	5,000/-	Confirmed
3.	Attendant charges	5,000/-	5,000/-	Confirmed
4.	Pain and suffering	10,000/-	10,000/-	Confirmed

5.	Transportation	5,000/-	5,000/-	Confirmed
6.	Loss of income	5,000/-	26,000/-	Enhanced
7.	Damages to clothes	1,000/-	1,000/-	Confirmed
8.	Medical bills	1,14,515/-	1,14,515/-	Confirmed
	Total	6,35,115/-	2,96,515/-	Reduced by Rs.3,38,600/-

14. In the result, both the appeals are partly allowed and the amounts awarded by the Tribunal at Rs.6,11,310/- and Rs.6,35,115/- are modified to Rs.3,03,510/- and Rs.2,96,515/-, respectively, together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant-Transport Corporation is directed to deposit the award amount, now determined by this Court, along with interest and costs, less the amount already deposited if any, within a period of twelve weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P. Nos.274 of 2009 & 1213 of 2010. On such deposit, the respondent in both the appeals are permitted to withdraw the award amount, now determined by this Court, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. The appellant-Transport Corporation is permitted to withdraw the excess amount, lying in the credit of M.C.O.P. Nos.274 of 2009 & 1213 of 2010, if the entire award amount has already been deposited by them. It is made clear that if the respondent in both the appeals have already withdrawn the entire award amount, the appellant/Transport Corporation is not entitled to recover the same from the respondent in both the appeals. Consequently, connected Miscellaneous Petitions are closed. No costs.

सत्यमेव जयते

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1.The Chief Judicial Magistrate,
(Motor Accident Claims Tribunal),
Krishnagiri.

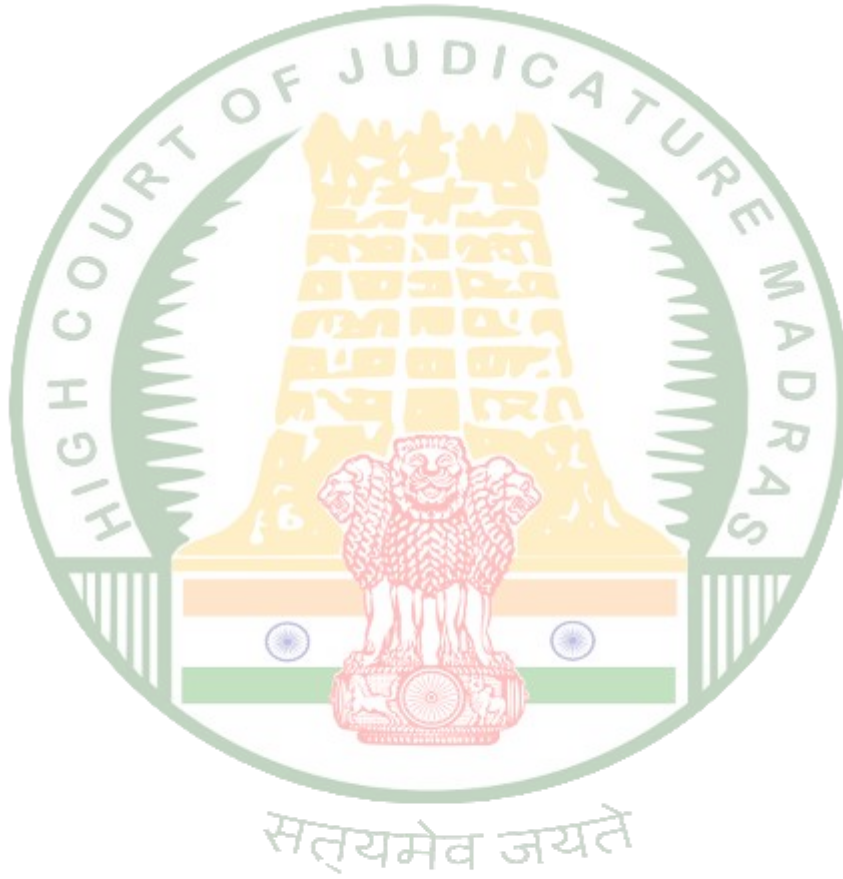
Copy to

The Section Officer,
VR Section,
High Court, Madras

+2ccs to Mr.J.Sivakumar , Advocate SR.No. 40984,40983

C.M.A. Nos.3614 & 3615 of 2013
and M.P.Nos. 1 & 1 of 2013

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