

In the High Court of Judicature at Madras**Dated: 07.01.2021****Coram****The Honourable Mr. Justice D.KRISHNAKUMAR****C.M.A.No.702 of 2010
and M.P.No.1 of 2010**

The Managing Director,
Tamil Nadu State Transport Corporation (Salem) Ltd.,
Dharmapuri Region,
Bharathipuram,
Dharmapuri.

... Appellant

..Vs..

A.K.Basha

... Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree passed by the learned Additional District Judge, (MACT), Krishnagiri in M.A.C.T.O.P. No.864 of 2007 dated 28.04.2009.

For Appellant : Mr.N.Anand

JUDGMENT

Aggrieved by the award passed by the learned Additional District Judge, (MACT), Krishnagiri, the Tamil Nadu State Transport Corporation (Salem) Ltd., has filed this appeal in M.A.C.T.O.P. No.864 of 2007 dated 28.04.2009.

2. The brief facts of the case are as follows:-

a) On 28.01.2007, at about 6.30 p.m., while the claimant was proceeding in his two wheeler near Central Theatre, Krishnagiri, the Transport Corporation bus bearing registration No.TN-29-N-1001 which came in the opposite direction, driven by its driver in a rash and negligent manner, hit the claimant, due to which, he has sustained grievous injuries on his fore head, right knee, upper thigh, right foot, left forearm, left hip etc. He was admitted in the hospital and took treatment as in-patient from 29.01.2007 to 27.02.2007 and underwent various operations. A criminal case was also registered against the driver of the Transport corporation in Crime No.108 of 2007 under Sections 279 and 337 IPC. At the time of accident, the claimant was aged about 52 years and earned about Rs.7,500/- per month through his driver profession in TNSTC at Hosur Depot. Due to the said accident, the claimant was unable to perform his duties and therefore filed the claim petition seeking a compensation of Rs.10 lakhs along with interest at the rate of 12% p.a., from the date of accident.

b) The Transport corporation has filed counter statement denying their negligence stating that the accident had occurred due to the negligent driving of the rider of the two wheeler and the owner and insurance company of the two wheeler are all necessary parties to the claim petition and pleaded to dismiss the petition for non joinder of necessary parties. They also denied the claim made by the petitioner in respect of the claimant's age, occupation and disability.

c) Before the Tribunal, on the side of the claimant, P.W.1 to P.W.3 have adduced their evidences and Exs. P1 to P12 were marked. On the side of the Transport corporation, only R.W.1 have deposed the evidence and no documents have been marked.

d) The Tribunal after considering the oral and documentary evidences, had rightly come to the conclusion that the accident had only occurred due to the rash and negligent driving of the driver of the Transport corporation bus and awarded a sum of Rs.2,93,736/- as compensation along with 7.5% p.a. interest from the date of petition till the date of realization to the claimant.

3. Aggrieved over the award passed by the Tribunal, the present appeal has been preferred by the Transport Corporation.

4. On coming to the quantum awarded by the Tribunal, P.W.1 had deposed that he had suffered grievous injuries due to the said accident and had produced the wound certificate Ex.P2, which discloses that the claimant had suffered 55% permanent disability. Hence, taking into account of Ex.P2 given by P.W.2/Dr. Gandhi, the Tribunal had fixed the permanent disability of the claimant at 40%. On considering Ex.P7/salary bills, the Tribunal had fixed his monthly income at Rs.4,995/- and adopted 11 years of multiplier and fixed the compensation as Rs.2,63,736/- for his permanent disability. Apart from this, the claimant was granted a sum of Rs.30,000/- towards medical bills, pain and sufferings, transportation, extra nourishment and attendant benefits. In total, the claimant was awarded a sum of Rs.2,93,736/- with interest at the rate of 7.5% p.a. from the date of petition till the date of realization.

5. It is the contention of the appellant/Transport Corporation that the petition has to be dismissed on the ground of non joinder of

necessary parties and also contended that the amount awarded by the Tribunal is excessive and exorbitant. This Court on analyzing the discussions made by the Tribunal is of the view that the Tribunal had rightly come to the conclusion that the accident had occurred only due to the rash and negligent driving of the driver of the Transport Corporation bus and rejected the plea of dismissing the claim petition on the ground of non joinder of necessary parties as no rebuttable evidence has been adduced on the side of the Transport Corporation and no documents have been marked disproving the contention of the claimant. On coming to the quantum arrived at by the Tribunal, taking into account the oral and documentary evidence, the Tribunal had rightly fixed the monthly income of the claimant at Rs.4,995/- based on Ex.P7, permanent disability at 40% on Ex.P2 and adopted the appropriate multiplier 11 for the age of 52 years as per the dictum laid down by the Hon'ble Apex Court in the case of Sarala Verma, **2009 ACJ 1298 (SC)** .

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6. I have carefully gone through the discussions made by the Tribunal for arriving at the compensation of Rs.2,93,736/- based on the evidences adduced before it and of the view that the same

warrants no interference. Hence, the appeal preferred by the appellant/Transport Corporation is liable to be dismissed.

7. Considering the facts and circumstances of the case, the Civil Miscellaneous Appeal is dismissed. The Transport Corporation is directed to deposit the balance amount of the award passed by the Tribunal if any to the credit of M.A.C.T.O.P. No.864 of 2007, Additional District Court, MACT, Krishnagiri, within the period of 12 weeks from the date of receipt of a copy of this order. The claimant is entitled to withdraw the same with proportionate interest on filing appropriate petition. Consequently, connected Miscellaneous Petition is closed. There shall be no orders as to costs.

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Index: Yes/No.
Internet: Yes/No.

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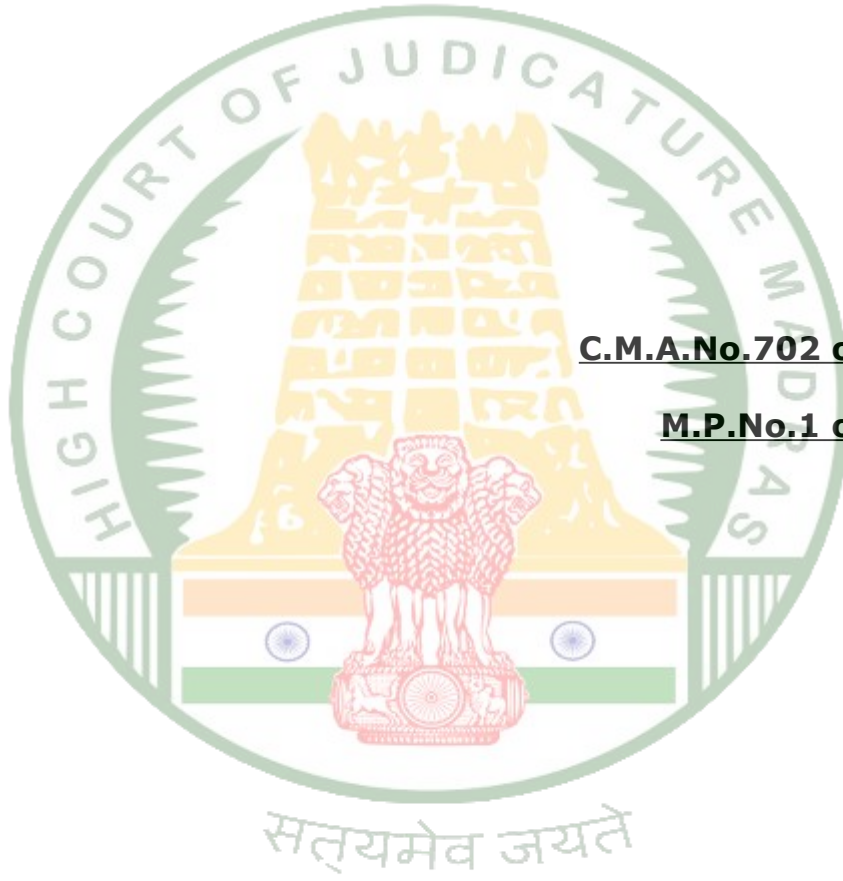
- 1.The Additional District Court,
(The Motor Accident Claims Tribunal)
Krishnagiri.
- 2.The Record Keeper,
V.R. Section, High Court, Madras.



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