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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.02.2024

CORAM

THE HON'BLE MRS.JUSTICE S.SRIMATHY

C.M.A(MD)Nos.911 of 2023 & 228 of 2024

and

C.M.P(MD)No.2841 of 2024

Dennis Jeyaraj

... Appellant in C.M.A.(MD)No.911/2023

The Managing Director,

Tamil Nadu State Transport Corporation,

Tirunelveli Division,

Tirunelveli.

... Appellant in C.M.A.(MD)No.228/2024

Vs.

1.Martin Selvakumar

2.The Managing Director,

Tamil Nadu State Transport Corporation,

Tirunelveli Division,

Tirunelveli.

... Respondents in C.M.A.(MD)No.911/2023

1.Dennis Jeyaraj

2.Martin Selvakumar

... Respondents in C.M.A.(MD)No.228/2024



PRAYER in C.M.A.(MD)No.911/2023: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to allow this appeal and enhance the compensation in M.C.O.P.No.6 of 2020, on the file of Motor Accident Claim Tribunal (Subordinate Judge), Kuzhithurai dated 13.06.2023.

PRAYER in C.M.A.(MD)No.228/2024: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, praying to set aside the order of the Motor Accident Claims Tribunal cum Sub Court, Kuzhithurai made in M.C.O.P.No.6 of 2020 dated 13.06.2023 and allow the appeal.

C.M.A.(MD)No.911/2023:

For Appellant : Mr.C.K.M.Appaji

For Respondent No.2 : Mr.S.Micheal Heldon Kumar

C.M.A.(MD)No.228/2024:

For Appellant : Mr.S.Micheal Heldon Kumar

For Respondent No.1 : Mr.C.K.M.Appaji

COMMON JUDGEMENT

C.M.A.(MD)No.911 of 2023 has been filed by the claimant to enhance the compensation in M.C.O.P.No.6 of 2020, on the file of Motor Accident Claim Tribunal (Subordinate Judge), Kuzhithurai dated 13.06.2023.

C.M.A.(MD)No.228 of 2024 has been filed by the Transport Corporation to set aside the order of the Motor Accident Claims Tribunal cum Sub Court, Kuzhithurai made in M.C.O.P.No.6 of 2020 dated 13.06.2023.



2. It is a case of injury. The claimant has filed the present CMA for enhancing the compensation granted by the Tribunal on the ground that the claimant underwent operation, but the compensation is not just and fair compensation.

3. In both the appeals, the Learned Counsel appearing for the Transport Corporation submitted that the claimant has marked only one certificate and the claimant has not approached the Medical Board for assessing his disability.

4. Moreover the Transport Corporation has filed this appeal to fix contributory negligence on the part of the injured claimant as well. It is seen that the Tribunal has rendered finding that Transport Corporation has not proved that there is no negligence on the part of the Transport Corporation. The relevant portion is extracted hereunder:

“The FIR was registered against the 1st respondent for his rash and negligent act. The 1st respondent, who is the driver, the 2nd respondent Tamil Nadu State Transport Corporation is the owner of the offending vehicle. On perusal of the Ex.P.1 to P.8, this Court is found that the accident took place due to the rash and negligent act of the 1st respondent. The 1st respondent's negligent act was not occurred was not proved by the respondents.”



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5. Further it is seen from the First Information Report, that some unknown vehicle has hit the claimant. Further, the claimant has not impleaded the Insurance Company. Therefore, this Court is of the considered opinion that the entire case has to be re-worked and the re-trial ought to be conducted. Therefore, this Court is setting aside the impugned order passed in M.C.O.P.No. 6 of 2020, on the file of Motor Accident Claim Tribunal (Subordinate Judge), Kuzhithurai, dated 13.06.2023. This matter is remitted back to the Tribunal for re-consideration. The parties are at liberty to implead necessary parties and produce the documents and evidence. The Tribunal is directed to consider the matter on merits, as per Law.

6. With these directions, these Civil Miscellaneous Appeals are allowed. No Costs. Consequently, connected miscellaneous petition is closed.

28.02.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To
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1. The Motor Accident Claims Tribunal
cum Sub Court,
Kuzhithurai.
2. The Managing Director,
Tamil Nadu State Transport Corporation,
Tirunelveli Division,
Tirunelveli.
3. The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

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**Common Judgment made in
C.M.A(MD)Nos.911 of 2023 &
228 of 2024**

28.02.2024