



C.M.A(MD)Nos.1152 & 1153 of 2011

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 05.03.2024

CORAM:

THE HON'BLE MR.JUSTICE **P. DHANABAL**

C.M.A(MD)Nos.1152 & 1153 of 2011

C.M.A(MD)No.1152 of 2011:

S.Thottishwari

... Appellant/Claimant

Vs.

Tamil Nadu State Express Transport
Corporation,
Represented by its Managing Director,
Pallavan House, Anna Salai,
Chennai.

... Respondent/Respondent

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act, challenging the award, dated 23.04.2010 made in M.C.O.P.No.300 of 2008 on the file of the Motor Accident Claims Tribunal cum Additional Subordinate Court, Thanjavur.

C.M.A(MD)No.1153 of 2011:

N.Suyambu Kasi

... Appellant/Claimant

Vs.



C.M.A(MD)Nos.1152 & 1153 of 2011

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Tamil Nadu State Express Transport
Corporation,
Represented by its Managing Director,
Pallavan House, Anna Salai,
Chennai.

... Respondent/Respondent

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act, challenging the award, dated 23.04.2010 made in M.C.O.P.No.302 of 2008 on the file of the Motor Accident Claims Tribunal cum Additional Subordinate Court, Thanjavur.

In Both the Cases:

For Appellants : Mr.P.Ganapathy Subramanian

For Respondent : Mr.M.Prakash

COMMON JUDGMENT

These Civil Miscellaneous Appeals have been preferred as against the order passed in M.C.O.P.Nos.300 of 2008 and 302 of 2008 on the file of the Motor Accident Claims Tribunal cum Additional Subordinate Court, Thanjavur, wherein, these appellants have filed separate claim application and the said petitions were allowed in part and a sum of Rs.10,000/- is awarded in M.C.O.P.No.302 of 2008 and in M.C.O.P.No.300 of 2008 a



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sum of Rs.1,27,698/- was awarded. As against the order passed by the Tribunal, the present Civil Miscellaneous Appeals have been preferred by the petitioners respectively.

2. For the sake of convenience and brevity, the parties herein after will be referred to as per their status / ranking in the Tribunal.

3. The brief averments of the petitions filed by the Tribunal are as follows:

Both the petitioners were travelled in the respondent bus, while so, on 30.09.2007 at about 09.00 A.M., when they travelled in the respondent bus bearing Registration No.TN 49 N 6499, when the bus was crossing in Pudukottai on 14.09.2007 at about 05.00 A.M., near Maapillainaickanpatti the bus dashed against the lorry bearing Registration No.TN 29 1726. Thereby, the petitioners sustained injuries and they permanently disabled. The petitioner in M.C.O.P.No.300 of 2008 taken treatment as in patient from 14.09.2007 to 17.09.2007 and thereafter, 17.09.2007 to 15.10.2007 he was admittedly as in patient in Saradha Hospital. Surgery was done to the petitioner in M.C.O.P.No.300 of 2008 and thereby, they are claiming



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compensation. The accident took place due to the negligence on the part of the driver of the respondent.

4. The averments of the counter filed by the respondent are as follows:

The petition is not maintainable and is liable to be dismissed. The accident did not take place due to the negligence on the part of the driver of the respondent. Therefore, the respondent is not liable to pay any compensation to the petitioners.

5. Before the Tribunal, joint trial was conducted and on the side of the petitioners, they examined P.W.1 to P.W.3 and marked Exhibits P.1 to P.29. On the side of the respondent, no oral or documentary evidences were adduced.

6. The Tribunal after hearing both sides and perusing the records, awarded a sum of Rs.10,000/- to the petitioner in M.C.O.P.No.302 of 2008 and awarded a sum of Rs.1,27,698/- in M.C.O.P.No.300 of 2008. Aggrieved by the order passed by the Tribunal, the petitioners have



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preferred these appeals for enhancement of the award amount.

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7. The learned Counsel appearing for the appellants / petitioners in both appeals would contend that the petitioner in M.C.O.P.No.300 of 2008 sustained grievous injuries and his left leg toe was heavily affected and surgery was done in the toe and he had permanently disabled and his disability is 46%. In order to prove the case of the petitioner, he examined P.W.1 as witness and also examined Doctor, P.W.3, who has given disability certificate. As per the disability certificate, his disability is 46%. But the Tribunal without any valid reasons, reduced the percentage of disability from 46% to 36% and also awarded a meager amount of Rs.1,250/- per 1% of disability and the Tribunal has failed to award a fair and just compensation in other heads. In M.C.O.P.No.302 of 2008, the Tribunal has only awarded a sum of Rs.10,000/- and the same is too low. Therefore, the order passed by the Tribunal is liable to be enhanced.

8. The learned Counsel appearing for the respondent would contend that already they sent a letter to the respondent but not responded and they report 'No instructions'. Since the matter was already posted under the



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caption 'For orders', today after hearing the petitioners' side, this Court is inclined to pass orders on merits.

9. This Court had heard petitioners' side and perused the materials available on record and upon perusing the documents including the order of the Tribunal, the point for determination in C.M.A(MD)No.1152 of 2011 is:

i) Whether the appeal has to be allowed or not?

10. The point for determination in C.M.A(MD)No.1153 of 2011 is:

i) Whether the appeal has to be allowed or not?

11. In this case, there is no dispute that the accident took place due to the negligence on the part of the driver of the respondent and the respondent has not filed any appeal as against the finding of the Tribunal in respect of the negligence fixed as against the driver of respondent. The present appeals are only as against the award passed by the Tribunal to enhance the quantum of the amount.



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12. As far as M.C.O.P.No.302 of 2008 is concerned, the petitioner has failed to prove the disability caused to the petitioner and as per the medical records, he sustained only simple injuries and thereby, the Tribunal has awarded a sum of Rs.10,000/- for simple injury sustained by him. Considering the nature of injuries, the award passed by the Tribunal is too low and thereby, this Court is inclined to enhance the award amount from Rs.10,000/- to Rs.25,000/- for the petitioner in M.C.O.P.No.302 of 2008. Therefore, the appeal in C.M.A(MD)No.1153 of 2011 is liable to be allowed in part.

13. As far as the appeal in C.M.A(MD)No.1152 of 2011 is concerned, the petitioner in M.C.O.P.No.300 of 2008, sustained grievous injury and surgery was also done to her. According to the medical evidence, her percentage of disability is 46% but the Tribunal has reduced 10% and only taken 36% without any reasons. Therefore, this Court is inclined to taken the percentage of disability as 46% and considering the nature of injury, this Court is inclined to award a sum of Rs.2,000/- per 1% of disability and thereby, the award amount would come to a sum of Rs.92,000/-. The Tribunal has awarded a sum of Rs.15,000/- towards pain



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and sufferings. Considering the nature of injuries and surgeries done to the petitioner, this Court is inclined to award a sum of Rs.25,000/- towards pain and sufferings. The Tribunal has awarded a sum of Rs.10,000/- towards extra nourishment and transport charges. This Court considering the nature of injuries and the treatment given to the petitioner is inclined to award a sum of Rs.10,000/- each for the extra nourishment and transport expenses. The Tribunal has awarded a sum of Rs.15,000/- for the removal of wire and the screw. This Court is inclined to award a sum of Rs.25,000/- towards removal of wire and the screw. Further the Tribunal failed to award loss of income. This Court is inclined to award a sum of Rs.10,000/- towards extra nourishment charges and loss of income during the course of treatment. Further, the Tribunal has awarded a sum of Rs.42,698/- towards medical bills and this Court also inclined to award the same amount. In total, the petitioner is entitled to a sum of Rs.2,04,698/- rounded off to Rs.2,00,000/-.

14. In view of the above said discussions, the petitioner in M.C.O.P.No.300 of 2008 is entitled to a sum of Rs.2,00,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of



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realization of the amount.

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15. In the result, C.M.A(MD)No.1153 of 2011 is partly allowed and the order passed by the Tribunal in M.C.O.P.No.302 of 2008 is modified to the effect that the petitioner is entitled to a sum of Rs.25,000/- towards compensation with interest at the rate of 7.5% per annum from the date of petition till the date of realisation of the amount and the respondent is directed to deposit the entire amount within a period of two month from the date of this judgment. After the deposit being made by the respondent, the petitioner is entitled to withdraw by filing appropriate application before the Tribunal.

16. In C.M.A(MD)No.1152 of 2011, this appeal is partly allowed and the order passed by the Tribunal in M.C.O.P.No.300 of 2008 is modified to the effect that the petitioner is entitled to a sum of Rs.2,00,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation of the amount and the respondent is directed to deposit the entire amount with interest before the Tribunal within two months from the date of this judgment. On the deposit being



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made by the respondent, the petitioner is at liberty to withdraw the same by filing appropriate application before the Tribunal. There shall be no order as to costs.

05.03.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR

To

1.The Managing Director,
Tamil Nadu State Express Transport
Corporation,
Pallavan House, Anna Salai,
Chennai.

2.The Motor Accident Claims Tribunal cum
Additional Subordinate Court,
Thanjavur.

3. The Section Officer,
Vernacular Record Section,
Madurai Bench of Madras High Court,
Madurai.



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P. DHANABAL, J.

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