

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.01.2016

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.127 of 2016
and
CMP No.1125 of 2016

The Managing Director,
Tamil Nadu State Transport Corporation
(Villupuram) Limited,
No.3/137, Salamedu,
Vazhuthareddy,
Villupuram 605 602.

... Appellant/Respondent

Versus

Keerthivarman

... Respondent/Claimant

Prayer: Civil Miscellaneous Appeal filed under section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 27.08.2014 made in M.C.O.P.No.231 of 2009 on the file of the Motor Accident Claim Tribunal, II Additional District Judge, Pondicherry.

For Appellant : Mr.K.J.Sivakumar

J U D G M E N T

This civil miscellaneous appeal is taken up for disposal at the stage of admission itself.

2.The Managing Director of the State Transport Corporation Limited has brought this appeal challenging the negligence and liability fixed by the learned Tribunal.

3.Learned counsel appearing for the appellant would submit that when the respondent/claimant was travelling on his Bajaj CT 100 motor cycle bearing Registration No.PY-01-Y-0651 on 16.07.2008 at about 8.10. a.m. with his friend as pillion rider along East coast road proceeding from south to north, it was the claimant alone who drove the vehicle in a rash and negligent manner and invited the accident by dashing with the bus

belonging to the Transport corporation from the opposite direction. Since the accident happened due to the negligence committed by the injured, he and his friend had fallen down and the respondent/injured sustained fracture of shaft femur, fracture of right tibial plateau, compound Grade II-A and Patella fracture, for which he was taken to PIMS hospital and he took treatment from 16.07.2008 to 13.08.2008 and again admitted on 17.08.2008 and discharged on 18.09.2008. Therefore, the learned Tribunal, considering the fact that the injured had sustained injuries and was on two occasions, fixed the liability on the driver of the bus. The analysis made by the learned Tribunal with regard to the document, negligence and the consequential liability ought to be reassessed by this court.

4. But, this court is not able to see any infirmity or error in the impugned order, for the reason that while the injured was travelling on his Bajaj CT 100 motor cycle bearing Registration No.PY-01-Y-0651 on 16.07.2008 at about 8.10. a.m. with his friend as pillion rider along East coast road proceeding from south to north, the bus bearing Registration No.TN-22-N-2225 came in rash and negligent manner from the opposite direction and dashed against the motor cycle driven by the claimant. This has been sufficiently supported by FIR registered by Kottakuppam Police Station in Crime No.17/2008 under sections 279, 337 IPC against the driver of the offending vehicle. Therefore, the learned Tribunal, only after perusing the FIR registered by the police at about 15 hours on the complaint of the driver of the bus and after examining the conductor of the bus RW1, who deposed that he had not seen the accident and therefore, he is unable to say who was negligent, has rightly come to the conclusion that the accident had occurred only due to rash and negligent driving made by the driver of the bus.

5. Further, keeping in mind that the claimant had sustained fracture of shaft femur, fracture of right tibial plateau, compound Grade II-A and Patella fracture, for which, he took treatment as inpatient in PIMS hospital from 16.07.2008 to 13.08.2008 and again got admitted as inpatient on 17.08.2008 and discharged on 18.09.2008 and by referring to the two surgeries underwent by the claimant as per Ex.P4, discharge summary and Ex.P5 discharge summary and by considering the evidence adduced by the doctor P.W.2 who had issued Ex.P16 Disability Certificate, certifying that the claimant had suffered disability at 44%, the learned Tribunal fixed permanent disability at 40% and thereby awarded a sum of Rs.1,20,000/- (40X3000) towards partial permanent disability. It has awarded a sum of Rs.20,000/- towards pain and sufferings. Taking note

of the medical bills produced before the Court, the learned Tribunal has rightly awarded a sum of Rs.70,000/- towards medical expenses and the same is hereby confirmed. Further, it has awarded a sum of Rs.5,000/- each towards extra nourishment and transport expenses, which are just and reasonable compensation and the same are hereby confirmed. Therefore, this court is not able to find any infirmity in the award passed by the Tribunal and accordingly, the civil miscellaneous appeal fails and the same is dismissed. No costs. The connected miscellaneous petition is also dismissed.

6.The appellant Transport Corporation is directed to deposit the entire award amount along with accrued interest less the amount already deposited if any, within a period of four weeks from the date of receipt of a copy of this order to the credit of MACTOP No.231 of 2009 on the file of the Motor Accident Claims Tribunal, II Additional District Court at Pondicherry. On such deposit, it is open to the claimant to withdraw the amount by moving appropriate application before the Tribunal.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

vri

To

The Motor Accident Claims Tribunal,
II Additional District Court,
Pondicherry.

+1cc to Mr.K.J.Sivakumar, Advocate, S.R.No.5253

C.M.A.No.127 of 2016

SV(CO)
CA(19/05/2016)

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