

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 08.01.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A. No.14 of 2016

Tamil Nadu State Transport
Corporation, Villupuram Ltd.,
rep. by its Managing Director,
Villupuram.

.. Appellant/Respondent

Versus

K.Kali

.. Respondent/Appellant.

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988 against the judgment and decree dated 17.03.2014 made in M.C.O.P.No.2373/2010 on the file of the Motor Accidents Claims Tribunal, (VI Judge, Court of Small Causes), Chennai.

For Appellant : Mr.K.J.Sivakumar

J U D G M E N T

The Civil Miscellaneous Appeal filed by the appellant/transport Corporation is directed against the correctness of the impugned award dated 17.03.2014 made in M.C.O.P.No.2373/2010 on the file of the Motor Accidents Claims Tribunal, (VI Judge, Court of Small Causes), Chennai, awarding a sum of Rs.1,58,000/- with 7.5% interest per annum, as against the claim of Rs.6,00,000/- for the multiple injuries sustained by the claimant.

2.According to the claimant, on 16.05.2010 at about 11.45 a.m., while the claimant was travelling as a Pillion rider in the Motor cycle bearing Registration No.TN-21-AA-5076 at Gandhi Road, near Srinivasa Hardwares, Sriperumbudur, from Sriperumpudhur to Chennai, a bus bearing Registration No.TN-21-N-0780 was driven by its driver in a rash and negligent manner from Chennai to Kancheepuram direction and hit against the motor cycle. In the above said accident, the claimant sustained grievous injuries. According to the claimant, the accident happened only due to the rash and negligent driving of the above said driver. Due to the said accident, the claimant sustained grievous injuries.

3.After considering the oral and documentary evidence, the Tribunal held that the accident had occurred only due to the rash and negligent driving of the driver of the bus and awarded a sum of Rs.1,58,000/- as compensation payable to the claimant with interest at the rate of 7.5%. Aggrieved by that award, the appellant-Transport Corporation has filed the present appeal.

4.Heard Mr.K.J.Sivakumar, learned counsel for the appellant and perused the document on record. On the side of the claimant, P.Ws 1 and 2 were examined and documents Exs.P1 to P5 were marked. On the side of appellant/Transport Corporation, R.W.1/driver of the bus was examined and no documents were marked.

5.Learned counsel appearing for the appellant/Transport Corporation, assailing the impugned award passed by the Tribunal, has contended that the learned Tribunal, going by the evidence of P.W.1/claimant, without being corroborated by any other evidence, wrongly reached its conclusion against the Transport Corporation. He would further submit that the claimant also has failed to file any valid document to prove her age and income. Adding further, he would submit that when the claimant has suffered only minor injuries, on the basis of the evidence adduced by the Doctor, who was examined as P.W.2, without even considering the accident register and the sketch that was not even marked, the Tribunal has held that the accident was occurred only due to the rash and negligent driving of the driver of the bus. With regard to fixation of disability at 40%, learned counsel would submit that when P.W.2/Doctor has admitted that no surgery was conducted on the claimant and no implants were inserted and the injury is not a scheduled injury, ignoring all these aspects, accepting the evidence deposited by the Doctor, the Tribunal has arrived at a sum of Rs.80,000/- towards disability of 40% at the rate of Rs.2,000/- per percentage. Therefore, the impugned award is liable to be interfered with, since the same is not legally sustainable.

6.This Court finds no merit in the contention made by the learned counsel for the appellant. The reason is that while the claimant was travelling as a pillion rider in the motor cycle, the bus belonging to the appellant Transport Corporation, driven by its driver and caused accident in which the claimant sustained grievous injuries namely fracture femoral lateral condyle, fracture lateral condyla, fracture patella and c effusion right knee. Since the claimant after sustaining injuries in the accident, has registered an F.I.R./ Ex.P1 against the driver of the bus, the claimant also while examining himself as P.W.1 has proved his case with the help of the registration of F.I.R. in Crime No.323 of 2010 on the file of Sriperumbudur Police Station that the accident had happened only due to the rash and negligent driving made by the driver of the bus.

7.A perusal of the finding would indicate that the accident had taken place on the date informed by the claimant and subsequent to the accident he has been admitted in the Sriperumbur Government Hospital. Moreover, the claimant has produced the discharge summary, marked as Ex.P2, X-ray, marked as Ex.P4, issued by the hospital, to support the multiple injuries sustained by him. Therefore, considering the fact that the claimant has sustained multiple injuries, the learned Tribunal has come to the conclusion that the claimant is entitled to claim compensation. Accordingly, the learned Tribunal holding that the driver of the bus is responsible for the accident, has come forward to accept the Doctor's evidence for fixing disability at 40% and awarded a sum of Rs.2,000/- per percentage of disability and arrived at a sum of Rs.80,000/- under the head of partial and permanent disability. That is confirmed as it is. Thus, it is seen that the Tribunal has awarded a total compensation of Rs.1,58,000/-, which seems to be very meagre amount and this Court is inclined to confirm the same.

8.Accordingly, the Civil Miscellaneous Appeal fails and the same is dismissed. No costs. Consequently, Connected miscellaneous petition is closed.

9.Since the learned counsel for the appellant submitted that the appellant has deposited Rs.25,000/- towards statutory deposit, the balance amount is directed to be deposited within a period of four weeks from the date of receipt of a copy of this order. On such deposit, it is for the claimant to move a petition before the Tribunal for withdrawing of the said amount.
vga

s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

To

1.Motor Accidents Claims Tribunal,
(VI Judge, Court of Small Causes), Chennai.

2.The Section Officer, V.R.Section,
High Court, Madras.

+ 1 cc to Mr.K.J.Sivakumar, Advocate SR 1583

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