

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 24.10.2016

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THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A. No.2314 of 2016
& C.M.P.No.16306 of 2016

The Managing Director,
Tamil Nadu State Transport Corporation,
Vellore Division, Vellore-9.

.. Appellant

Versus

1.M.Kaliappan

2.Shriram General Insurance Company Ltd.,
Head Office:E-8, RIICO Industrial Area,
Sitapura, Jaipur-303 022.

.. Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988 against the judgment and decree dated 11.03.2016 made in M.C.O.P.No.33/2013 on the file of the Motor Accidents Claims Tribunal, (Sub Judge), Krishnagiri.

For Appellant : Mr.S.Sairaman

J U D G M E N T

The Managing Director of Tamil Nadu State Transport Corporation, questioning the impugned order dated 11.03.2016 made in M.C.O.P.No.33/2013 on the file of the Motor Accidents Claims Tribunal, (Sub Judge), Krishnagiri,

awarding a sum of Rs.2,00,378/- to the claimant, has come forward to this Court with this appeal.

2.Learned counsel appearing for the appellant would submit that the finding of the learned Tribunal in respect of the negligence aspect, is contrary to the evidence of records. Adding further, he would submit that the learned Tribunal, only relying upon the evidence of the claimant's side, who are only the interesting witnesses, has given such a wrong finding. He would further submit that when the claimant has made a claim petition for damage of vehicle bearing Registration No.TN-46-F-0420, which had met with an accident on 09.10.2011, the learned Tribunal ought to have considered the fact that the vehicle was duly insured with the Shriram General Insurance Company Ltd./the first respondent therein and ought to have directed the same to pay the compensation towards the said vehicle. On the contrary, when the said vehicle has been insured with the first respondent therein, the learned Tribunal without saddling the liability, to pay the compensation for the damages caused to the claimant's vehicle, on the part of the first respondent therein, who has got valid licence, has erroneously come to the conclusion that the second respondent therein/appellant herein is liable to pay the compensation.

2.1.Learned counsel for the appellant would further submit that the learned Tribunal has wrongly held that since the vehicle was kept idle for a period of 20 days, it will fetch of Rs.40,000/- monthly rental income, if the vehicle would have been let for rent, which is based on surmises and conjectures and the same is liable to be set aside.

3.This Court hardly finds any substance in the contentions made by the learned counsel for the appellant. The reasons are that on 09.10.2011 at about 10.50 p.m., when the deceased drove the Trax Cargo Goods vehicle bearing Registration No.Trax Cargo TN-46-F-0420 from Rayakottai to Chennai, a bus bearing Registration No.TN-23-N-1725 belonging to the appellant, dashed against the said Trax Cargo Goods Vehicle, in which, the deceased died on the spot and the front side of the vehicle was heavily damaged, for which, the father of the deceased claimed damages for a sum of Rs.3,00,000/-. The Transport Corporation has taken a stand before the learned Tribunal by way of filing counter that the said petition was not maintainable stating that since the said Trax Cargo has been insured with the Shriram General Insurance Company Ltd.,the second respondent herein, the claimant cannot claim compensation for revenue loss and tax loss from the appellant herein while the negligence was on the part of the deceased, who drove the cargo goods vehicle and therefore, the appellant is not liable to pay any compensation.

3.1.Considering the fact that the F.I.R. was immediately filed, pursuant to the accident, against the driver of the bus belonging to the Transport corporation, the learned Tribunal has come to the conclusion that although the damaged vehicle belonging to the deceased was insured with Shriram General Insurance Company Ltd./the second respondent herein, the accident was caused only due to the rash and negligent driving of the driver of the bus belonging to the Transport Corporation and therefore, a clear and categorical finding has been recorded that the appellant Transport Corporation is liable to pay the compensation and the second respondent herein is not liable to pay any compensation. I fully agree with this findings. When the accident occurred only due to the rash and negligent driving of the driver of the bus belonging to the Transport Corporation, on account of the damages caused to the Cargo goods to the tune of Rs.3,70,000/- namely the material cost of Rs.2,00,000/- labour cost of Rs.50,000/-, revenue loss of Rs.1,00,000/- for 1 month and tax loss of Rs.20,000/-, the learned Tribunal has directed the Transport Corporation to pay a sum of Rs.1,60,378/- as damages to the vehicle. Taking reliance from Ex.P7/the purchase bill for the charges of the vehicle, the learned Tribunal has held that the vehicle was kept idle for 20 days and if the same would have been let for rent, the appropriate amount for the said 20 days emoluments can be derived from the vehicle would be Rs.40,000/- and as such, it has fixed a sum of Rs.40,000/- towards monthly rental income derived

from the vehicle. Therefore, this Court finds no infirmity in the impugned award passed by the learned Tribunal.

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

5. 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, failing which the interest payable would become 12% for the delayed period. On such deposit, it is for the claimant to move a petition before the learned Tribunal for withdrawing of the said amount.

24.10.2016

Index : Yes / No
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To

1. The Motor Accidents Claims Tribunal,
(Sub Judge), Krishnagiri.

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

T.RAJA, J.

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