

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.04.2016

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

C.M.A.No.807 of 2016
and C.M.P.No.6476 of 2016

The Managing Director
Metropolitan Transport Corporation Ltd.,
Pallavan House, Pallavan Salai,
Chennai 2

... Appellant/3rd Respondent

vs.

1. V.Ramasamy ...1st respondent/claimant

2. Pradheepan (died)
his legal heir Balasubramaniam

3. The Oriental Insurance Company
Limited,
No.377/27, Anna Salai,
III Floor, Teynampet, Chennai 18.

...2nd & 3rd Respondents/
1st and 2nd respondents

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 28.10.2011 passed in M.C.O.P.No.2243 of 2008 on the file of the Motor Accidents Claims Tribunal, III Court of Small Causes, Chennai.

For Appellant : Mr.S.Sivakumar

JUDGMENT

The Transport Corporation has preferred this Civil Miscellaneous Appeal challenging the Judgment and decree dated 28.10.2011 passed in M.C.O.P.No.2243 of 2008 on the file of the Motor Accidents Claims Tribunal, III Court of Small Causes, Chennai.

2. Heard the learned counsel for the appellant and perused the materials available on record.

3. This is a case of injury. In an accident that took place on 28.08.2006 at 14.30 hours, when the claimant was travelling as a pillion rider in a Motorcycle bearing Registration No.TN-04-R-4407 from Velacherry to Saidapet, near Alsa deer park, Guindy, the 2nd respondent's son who drove the motorcycle bearing Registration No.TN-07-AH-8771 in a rash and negligent manner, hit against the claimant's motorcycle, resulting in the claimant sustaining multiple injuries. The claimant approached the Tribunal claiming compensation to the tune of Rs.2,25,000/-.

4. The Tribunal, taking into account the oral and documentary evidence granted compensation to the tune of Rs.61,000/-, by directing the 3rd respondent and the appellant to pay the compensation in the ratio of 50:50 to the claimant, by holding that the accident was due to rash and negligent driving of both the vehicle drivers viz., driver of the motorcycle which belongs to the 2nd respondent and the Bus driver. Aggrieved over the same, the Transport Corporation is before this Court.

5. According to the claimant, the 2nd respondent's son who drove the motorcycle bearing Registration No.TN-07-AH-8771 in a rash and negligent manner, hit against the claimant's motorcycle due to which, the claimant fell down and sustained injuries and the 2nd respondent's son lost his control and fell down under the MTC Bus and he died on the spot.

6. The learned counsel appearing for the Transport Corporation contended that the 2nd respondent has lost his control and fell down under the MTC Bus and died on the spot and hence it is only due to the rash and negligent driving of the 2nd respondent, the accident had occurred and the driver of the Bus was no way responsible to pay any compensation to the claimant and he further contended that the compensation awarded by the Tribunal is on the higher side.

7. One Mohankumar, R.W.1, an eye-witness, conductor of the Bus of the Transport Corporation, has deposed that at the time of accident, the driver of the bus applied sudden brake and he also ascertained that two motorcycles dashed against each other and the present claimant sustained injuries. However, he has stated that he was issuing tickets to the passengers and hence it was not possible for him to see the accident. Taking into account the evidence of R.W.1 and taking note of the Accident Register Ex.P.2 and Ex.P.3, Outpatient chit issued by the Government Royapettah Hospital, wherein, it is mentioned that "alleged to have met with RTA while riding in back in a two wheeler hit by MTC Bus M-70 in Velacherry road near E.B. Office" and also taking note of the fact that a perusal of the medical records reveal that the claimant was hit by MTC Bus, the Tribunal, came to the conclusion that the accident happened due

to the rash and negligent driving of the both drivers and therefore, contributory negligence of 50% on the part of the drivers was fixed, which, in my opinion, is justified. The Tribunal awarded compensation to the tune of Rs.61,000/- based on Exs.P2 and P3 together with the disability certificate Ex.P.5 issued by Dr.M.Saravana Bavanantham, P.W.2 to the effect that there was loss of earning capacity. I find that for the injuries sustained by the claimant as stated by P.W.2 Doctor and based on the disability certificate, the award of the Tribunal is perfectly justified. Hence, taking note of the totality of the circumstances, I find no reason to interfere with the award of the Tribunal.

5. In the above circumstances, finding no merit, by confirming the award of the Tribunal, the Civil Miscellaneous Appeal is dismissed. The rate of interest granted by the Tribunal is also confirmed. The appellant Transport Corporation Company is directed to deposit their share of the award amount together with interest to the credit of MCOP No.2243 of 2008 on the file of the Motor Accident Claims Tribunal (III Court of Small Causes), Chennai, if not already deposited, within a period of eight weeks from the date of receipt of a copy of this order and on such deposit being made, the claimant is entitled to withdraw the same on filing necessary application before the Tribunal. There will be no order as to costs in this appeal. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

The Motor Accidents Claims Tribunal
III Court of Small Causes, Chennai.

+1cc to Mr.S.Sivakumar, Advocate sr.23557
+1cc to Mr.Kother Adam, Advocate Sr.24066

C.M.A.No.807 of 2016

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srg 07/06/2016