

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:- 04.01.2016

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.3656 of 2014

and

M.P.No.1 of 2014

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

Versus

S.Sivaganam ...Respondent/Petitioner

Prayer: Civil Miscellaneous Appeal filed under section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 04.02.2013 made in M.C.O.P.No.64 of 2011 on the file of the Motor Vehicle Accidents Claims Tribunal, Chief Judicial Magistrate Court, Villupuram.

For Appellant :: Mr.K.J.Sivakumar
For Respondents :: Mr.C.Munusamy

J U D G M E N T

This civil miscellaneous appeal has been directed against the impugned award passed by the learned Motor Vehicles Accident Claims Tribunal cum Chief Judicial Magistrate, Villupuram in M.C.O.P.No.64 of 2011 dated 04.02.2013 awarding a sum of Rs.1,96,500/- as against the claim of Rs.6,00,000/- for the multiple injuries suffered by the claimant. Aggrieved by the award of the Tribunal, the Managing Director of the Tamilnadu State Transport Corporation has filed this appeal.

2.Learned counsel appearing for the appellant would submit that the learned Tribunal has wrongly proceeded against the Transport Corporation merely on the basis of the registration of the FIR ignoring the delay of 9 days in filing in registering the said FIR. Moreover, no explanation was given for the said delay in filing the FIR against the driver of the offending vehicle. When the accident took place on 29.08.2007 at about 5.45 p.m., the injured Sivagnam, who was riding TVS Star bearing

Registration No.TN-31-F-5887 coming from Tindivanam towards Villupuram in the place of Chendur G.S.T.Road, suffered head injuries in the accident caused by the negligent driving of the driver of the bus bearing Registration No.TN-32-N-2705. When he further claimed that he was admitted in Government General hospital, Villupuram and then as inpatient in E.S.I. hospital from 29.08.2007 to 04.09.2007, after discharged from the hospital, he has not filed any complaint. Learned counsel appearing for the appellant would further submit that since the injured had filed the complaint only on 07.09.2007, without considering the reason for the delay in registering the FIR, the learned Tribunal has wrongly proceeded with the claim petition and accepting 35% permanent disability has awarded a sum of Rs.1,96,500/-. He would further submit that when there was no valid document filed by the respondent/claimant for the proof of age and on the other hand, the claim was wrongly allowed, therefore, the Transport Corporation being aggrieved by the impugned award has come before this court. Hence, the impugned award is liable to be interfered with, he pleaded. But this court is not able to see any merits in the appeal.

2.The reason is that on 29.08.2007 at about 5.45p.m., when the victim S.Sivagnam, who was driving TVS Star motor cycle bearing Registration No.No.TN-31-F-5887 was hit by the appellant's bus bearing Registration No.TN-32-N-2705 driven by its driver rashly from Tindivanam to Villupuram. Hence, the claimant S.Sivagnam suffered the following injuries due to the above accident:

- i) Right head Laceration over the face.
- ii) Right Leg fracture,
- iii) Right Proximal Humerous fracture,
- iv) Injury on his right shoulder,
- v) Injury on his right upper limp,
- vi) Procedure done in open reaction and in Karud fixation with plate for right proximal Humerous.

In view of the multiple and grievous injuries sustained all over his body, the injured was admitted in the Government Hospital, Villupuram. After some time, he was admitted in the ESI hospital, Villupuram. Again, for taking specialised treatment, he was referred to Ramachandra Hospital, Porur, wherein he took treatment as inpatient for 10 days and also underwent surgery. It is seen from the Ex.A4 issued by the ESI Hospital and also from Ex.A5 issued by the Ramachandra Hospital, Porur, coupled with Ex.A6 Medical Bills issued by the hospitals that he was discharged from the Government hospital, Villupuram and got re-admitted as inpatient in Ramachandra Medical centre, Porur from 05.09.2007 till 11.09.2007 for the following injuries:

- i) Right shoulder humerus fracture,
- ii) Multiple injuries present over nose, cheek,
- iii) Laceration over fore arm,
- iv) Right upper limb swelling and injury on right shoulder,
- v) Laceration over right knee and right great toe and
- vi) Severe head injury.

The evidence produced by the claimant shows that he had undergone surgery and plate has been inserted at Sri Ramachandra Medical Centre. Subsequently, he has taken treatment for the period of one year as out patient. Therefore, the learned Tribunal accepting the disability certificate issued by the Doctor which was marked as Ex.P15 dated 26.09.2012 along with X-ray marked as Ex.P16 dated 26.09.2012, has rightly accepted the case of the injured that he met with an accident that took place on 29.08.2007 due to the negligent driving of the driver of the appellant's bus and again after perusing the referred slip issued by the Chief Doctor from the Government Hospital, Villupuram, came to the conclusion that he took treatment for the aforesaid injuries as inpatient from 29.08.2007 till 04.09.2007 in the Government hospital, Villupuram and again, he took treatment at Sri Ramachandra Medical Center, Porur from 05.09.2007 to 11.09.2007. After arriving at a conclusion that the accident had occurred due to the negligence caused by the driver of the offending vehicle of the Transport Corporation, the learned Tribunal applying the maximum rate viz., Rs.2000/- per 1% disability, has awarded a sum of Rs.70,000/- towards partial disability. With regard to the other heads, a nominal amount of Rs.15,000/- has been fixed towards pain and suffering, Rs.3,000/- has been awarded for nutrition, Rs.16,670/- has been awarded for transport expenses. Considering the fact that the claimant has incurred a sum of Rs.91,830/- towards medical expenses, the same amount has been awarded on the basis of medical bills, therefore, this court is not able to find any merit in this appeal. Hence, the civil miscellaneous appeal fails and the same is dismissed. No costs. The connected miscellaneous petition is also dismissed.

3.The appellant is directed to deposit the entire award amount to the credit of MCOP No.64 of 2011 on the file of the Chief Judicial Magistrate, Motor Accident Claims Tribunal, Villupuram within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the claimant is directed to withdraw the award amount by moving appropriate application before the Tribunal.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

vri

To
The Chief Judicial Magistrate Court,
Villupuram.

copy to

The Section Officer,
VR section High Court Madras

+1 cc to K.J.Sivakumar Advocate sr.492
+1 cc to Mr.C.Munusamy Advocate sr.103

CMA No.3656 of 2014

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