

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 15.12.2016
CORAM :
THE HONOURABLE MR. JUSTICE G. CHOCKALINGAM
CMA.No.438 of 2003

Karunanithi

... Appellant/Claimant

Vs.

1. Ravichandran

2. Jeeva Transport Corporation
rep by its Branch Manager
(Athiyur Branch)

Bhavani Taluk, Periyar District. ... Respondents/Respondents

PRAYER : Petition filed under Section 173 of Motor Vehicles Act, against the judgment and decree dated 19.04.1995 made in MACT.OP.No.119 of 1992 on the file of the Motor Accidents Claims Tribunal, Gobichettipalayam.

For appellant : Mr. Muthumani Doraisami.

For respondents: Mr. V. Udayakumar for R2.

R1- served. No appearance.

JUDGMENT

The Civil Miscellaneous Appeal is filed against the order dated 19.04.1995 made in MACT.OP.No.119 of 1992 on the file of the Motor Accidents Claims Tribunal, Gobichettipalayam, for enhancing the compensation awarded to the appellant.

2. The learned counsel for the appellant would mainly contend that the trial Court ought to have fixed the entire responsibility on the first respondent and the entire compensation has to be paid by the first respondent, but the trial Court erroneously erred in fixing the liability on the respondents at 50% each. The van driver is also equally responsible for the accident, the trial Court ought to have fixed liability on the van driver also. Hence, the learned counsel prays to allow the appeal and direct the respondents to pay the entire compensation to the appellant/claimants.

3. The learned counsel for the second respondent mainly contended that the trial Court after considering the entire facts and circumstances comes to a correct conclusion both the driver of the van and also the first respondent are equally responsible for the accident. The accident occurred due to the negligence of both the drivers of van and the bus, the details of van and the driver are not traceable by the claimant, hence, the trial Court fixed the liability on the respondents 1 and 2

and there is no illegality or infirmity in the order of the trial Court and the learned counsel prays for dismissal of the appeal.

4. Heard the arguments of both sides and perused the entire materials produced on either side.

5. In the claim petition it is stated that the claimant was sitting at the side of the window behind the driver seat, resting his right elbow on the window frame, when the bus was proceeding at the Kallimadai diversion road at about 3.15pm one tempo van coming in the opposite direction from north to south on Gobi to Tiruppur main road, at that time the driver of the bus in which the claimant is travelling was driving the bus in rash and negligent manner, without following the road rules. The van is also coming in the same manner in the opposite direction touched the body of the bus in high speed, thereby the right side of the bus body was damaged to a considerable extent and at the same time, the right side of the van body was also damaged. In view of the said accident, the claimant's right hand elbow was crushed and the muscles were damaged to the most extent and suffered injuries due to the accident. The accident took place due to the rash and negligent driving of both the drivers of bus and the van, the claimant also sustained injuries due to the accident. The trial Court after considering the pleadings mentioned in the claim petition and also the oral and documentary evidences adduced on both sides comes to a correct conclusion that the drivers of van and the bus are equally responsible for the accident and rightly directed the respondents 1 and 2 to pay the compensation to the claimant.

6. The learned counsel for the appellant contended that the Tribunal ought to have fixed the life span of the individual as 70years for calculating the compensation. The trial Court after hearing both sides finally comes to the conclusion that the claimant has not impleaded the owner of the van and the insurer of the van, due to non availability of the above particulars, the trial Court rightly fixed the liability on the respondents 1 and 2 to pay the compensation to the claimant. The trial Court after considering the evidences, fixed the damages for the injuries caused to the claimants and properly assessed the loss and awarded just and reasonable compensation, this Court finds no valid reason to interfere with the compensation awarded by the trial Court.

7. In the result, the civil miscellaneous appeal stands dismissed. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

tsh

To
The Subordinate Judge
Motor Accidents Claims Tribunal, Gobichettipalayam.

+1 cc to M/s.Muthumanidoraaisami Advocate sr 73386
+1 cc to M/s.V.Udayakumar Advocate sr73765

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