

IN THE HIGH COURT OF JUDICATUE AT MADRAS

DATED 09.01.2017

CORAM

THE HONOURABLE DR. JUSTICE S.VIMALA

C.M.A. No.34 of 2017

and

CMP.No.327 of 2017

The Managing Director,
Tamil Nadu State Transport Corporation
Kumbakonam Division -II,
Trichirapallai. ... Appellant/Respondent

versus

S.Robert Claive ... Respondent/Petitioner

Prayer:Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 10.07.2015 made in M.C.O.P.No.34 of 2015 on the file of the Motor Accident Claims Tribunal/ Chief Judicial Magistrate, Nagapattinam.

For appellant : Mr.D.Venkatachalam

J U D G M E N T

Challenging the finding of negligence, the Transport Corporation has filed this Appeal. It is the case of collusion between the bus belonging to the Transport Corporation bearing Registration No. TN 45 N 3451 and a lorry bearing Registration No. MH 46 H 3216 .

2. The injured Robert Clive, aged 49 years, a driver by profession, working in O.N.G.C., earning a sum of Rs.15,000/- per month, met with an accident that occurred on 13.11.2014. Hence, he filed a claim petition in M.C.O.P.No.34 of 2015, on the file of the Motor Accidents Claims Tribunal (Chief Judicial Magistrate), Nagapattinam.

3. As per the averment made in the claim petition, on 13.11.2014, the claimant himself was driving the container lorry from West to East from Tiruvarur to Karaikkal and when the vehicle was nearing Keelvellore Taluk Office, the bus belonging to the Corporation bearing Registration No. TN 45 N 3451, coming from East to West in the opposite direction, driven in a rash and negligent manner , dashed against the lorry, causing the accident, as a result of which, the claimant sustained grievous

injuries and fracture in left hand.

4. The Tribunal, on considering the oral and documentary evidence has awarded a sum of Rs. 1,63,000/- with interest at 7.5% per annum from the date of petition till the date of deposit.

5. Challenging the same, the present Civil Miscellaneous Appeal has been filed by the transport Corporation.

6. The main contention of the learned counsel for the appellant is that the trial Court ought not to have considered the evidence of PW1 whose evidence has not been corroborated by any other independent witness. It is further submitted that one of the defense taken by the claimant is that the accident had occurred due to negligence on the part of the driver of the transport Corporation. It is submitted by the learned counsel for the appellant that nature of defense taken clearly shows that the claimant himself was tort-feasor and, therefore, the claim against the tort-feasor is not maintainable, which aspect has not been considered by the Tribunal and, therefore, the order passed by the Tribunal deserves to be set aside.

7. This Court gave its anxious consideration to the contentions advanced by the learned counsel for the appellant and also perused the materials available on record as also the findings recorded by the Tribunal.

8. A perusal of the order passed by the Tribunal reveals that the Tribunal has considered the evidence adduced. The Tribunal has also taken note of the fact that the claimant himself has preferred the F.I.R., which is marked as Ex.P1. The Tribunal has also considered the evidence of the witness examined on the side of the Transport Corporation.

9. It is relevant to note that the driver of the Transport Corporation, who has been examined as a witness, has admitted that he has been under suspension for three days because of the alleged accident. The Tribunal, considering the above facts available on record has fastened negligence on the driver of the Appellant/Transport Corporation.

10. When the transport Corporation has taken defense that the accident had occurred on account of contributory negligence on side of the bus belonging to the Transport Corporation as well as the container lorry, the prudent course for the appellant would have been to file an application for impleading the owner of the lorry as a party to the claim petition. However, such a step has not been taken. In the absence of the appellant impleading the owner of the lorry as a party to the claim petition, the appellant cannot urge that the accident had happened due to the negligence of the drivers of both the vehicles and, therefore, the finding of the Tribunal that the

accident had happened on account of negligence on the part of the driver of the bus belonging to the Transport Corporation cannot be said to be incorrect. The finding rendered by the Tribunal is based on documentary evidence and there being no contra evidence to the same, the finding rendered by the Tribunal deserves to be sustained.

11. For the reasons stated above, there being no merits, this Civil Miscellaneous Appeal is liable to be dismissed and, accordingly, the same is dismissed, confirming the Judgment and decree dated 10.07.2015, in M.C.O.P.No.34 of 2015, on the file of the Motor Accident Claims Tribunal, (Chief Judicial Magistrate), Nagapattinam.

12. The appellant/Transport Corporation is directed to deposit the entire award amount as quantified by the Tribunal along with interest and costs, less the amount, if any, already deposited to the credit of the claim petition, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer the amount directly to the bank account of the claimant through RTGS within a period of two weeks thereafter.

Sd/-
Assistant Registrar(co)

//True Copy//

Sub Assistant Registrar

To

1.Motor Accident Claims Tribunal
Chief Judicial Magistrate, Nagapattinam.

2. The Section Officer, VR Section,
High Court, Madras. (2 copies)

+1cc to Mr.D.Venkatachalam, Advocate Sr.No.1971

MR (CO)
sm:6.4.2018

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