

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

C.M.A.No.1154 of 2006

and

CMP.No.4819 of 2006

The Managing Director
Tamil Nadu State
Express Transport
Corporation Limited,
Chennai-2.

.. Appellant/2nd Respondent

Vs.

1.S.R.Kumaresan

2.N.Thangavelu

.. Respondents/Petitioner &
1st Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decreetal order dated 31.03.2005 made in M.C.O.P.No.130/2003 on the file of Motor Accident Claims Tribunal (Additional District Court, Fast Track Court No.IV) Bhavani, to set aside the same.

For Appellant : M.S.V.Vasanthakumar

For R1 : Mr.P.Thangavel

R2 : Not ready notice

JUDGMENT

Tamil Nadu State Express Transport Corporation is the appellant. The 2nd respondent Thangavelu, was the driver of the offending bus. The appellant is the owner of the bus. The first respondent is the claimant. He has filed the above petition claiming a total compensation of Rs.7,00,000/- for the injuries sustained by him in a motor accident.

2. After considering the materials, the Tribunal has come to the conclusion that the accident occurred only due to the negligent driving of the 2nd respondent. The accident occurred on 15.02.2000 when the claimant was riding his scooter from east to west on Bhavani-Sankari main road. The claimant claims that the 2nd respondent drove his bus in a rash and negligent manner and dashed against his scooter. The learned counsel for the appellant would contend that the accident occurred only due to the negligence on the part of the

claimant. According to him the claimant drove his vehicle in a rash and negligent manner, that 3 persons including the claimant travelled on the scooter and that thereby they have violated the Motor Vehicle Rules. It is significant to note that in support of the case the driver of the bus has not been examined. Only the conductor of the bus has been examined. However, in connection with this accident, a criminal case has been registered and after completion of the investigation, the driver of the bus has been charge sheeted. Ex.-P1 is the copy of the F.I.R., Ex.-P2 is the rough sketch and Ex.P3 is the mahazar prepared by the Investigating Officer. The oral evidenced adduced on the side of the claimant is supported by the criminal case records. Therefore, there is no difficulty in coming to the conclusion that the accident occurred only due to the rash and negligent act of the offending bus driver.

3. The learned counsel for the appellant would contend that the claimant and two others travelled on the scooter and thereby they have violated the Motor Vehicles Rules and in view of the said violation the appellant is not liable to pay the compensation. In a similar situation, a Division Bench of this Court in Kattabomman Transport Corporation Limited Vs. Vellai Duraichi [2004 (1) CTC 677] held that mere violation of provisions of Act or Rules which prescribes maximum of two riders in two wheeler will not enable corporation to seek reduction in compensation. In the case at hand, as already pointed out there is evidence to show that the accident occurred only due to the rash and negligent act of the bus driver. Therefore the contention of the appellant cannot be countenanced.

4. Coming to the quantum of compensation, it should borne in mind that Court has to award just compensation. The Tribunal awarded Rs.4,79,000/- as against the claim of Rs.7,00,000/-. The claimant produced Ex.P-6, wound certificate and Ex.P-16, disability certificate. He was treated at two hospitals. Ex.P-14, discharge summary shows that the claimant was admitted to C.K.Hospital, Erode on 16.02.2000 and he was discharged on 21.02.2000. It is seen from the Ex.P16, medical certificate that the claimant was treated as an in-patient for nearly 17 days. The Doctor has assessed the disability at 45%. The claimant was working as a collection agent in a finance company and was drawing Rs.5,000/- per month. The Tribunal has fixed his monthly income only at Rs.4,500/-. He was aged 19 years at the time of the accident. Having regard to the nature of disability and the injuries suffered by him, the Tribunal awarded Rs.3,88,800/- under the head of permanent disability/loss of earning. A perusal of the Ex.P-16, disability certificate shows that plate and screws were fixed in left tibia. Considering the nature of injuries and the disability suffered by the claimant it cannot be said that the amount of Rs.3,88,800/- for disability and loss of earning is excessive.

5. The Tribunal awarded only a meager sum of Rs.2,000/- under the head of pain and suffering. It allowed Rs.2000/- towards extra nourishment and Rs.1,000/- for travelling expenses. The Tribunal has not awarded any amount under the head attendant charges. It has also not awarded any amount for future medical expenses. The compensation allowed towards medical expenses is supported by bills. In these circumstances, it cannot be said that the ultimate award for Rs.4,79,000/- to be improper.

6. I am satisfied that the award is justified on facts and it does not require any interference. The appeal is dismissed. The appellant is directed to deposit the entire amount awarded by the Tribunal and on such deposit, the claimant may be permitted to withdraw the same forthwith. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

kmi

To:

1. The Motor Accident Claims Tribunal
Additional District Court,
(Fast Track Court No.IV), Bhavani.
Namakkal.

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

+1cc to Mr.S.V. Vasanthakumar, Advocate, S.R.No.10108
+1cc to Mr.Ma. P. Thangavel, Advocate Sr.10058

SR(CO)
EU 4.4.17

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