

IN THE HIGH COURT OF JUDICATURE AT MADRAS

D ATED: 02.08.2017

CORAM

THE HON'BLE DR.JUSTICE S.VIMALA

C.M.A.No.2457 of 2017

Tamil Nadu State Transport Corporation
(Villupuram Division I) Limited,
Villupuram
represented by its Managing Director

... Appellant/Respondent

Versus

Pakkirisamy

... Respondent /Claimant

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, against the Judgment and Decree dated 2.07.2001 made in M.C.O.P. No.308 of 1998 of the file of Motor Accidents Claims Tribunal (Sub Court), Chidambaram.

For Appellant : Mr.G.Muniratnam.

JUDGMENT

The claimant, Pakkirisamy, aged 60 years, an Agriculturist, earning a sum of Rs.2,000/- p.m., suffered injuries in an accident on 24.11.1997. He suffered fracture of right leg with dislocation and other injuries all over the body. He claimed a sum of Rs.1,00,000/- as compensation in respect of the injuries suffered.

2. The Tribunal, on examination of oral and documentary evidence awarded a sum of Rs.20,000/-, with interest at the rate of 9% per annum from the date of petition till the date of payment. Challenging the said award, the Transport Corporation has filed the present appeal.

3. It is the contention of the learned counsel appearing for the appellant that the Driver was not negligent while driving the vehicle and that the accident was not on account of rash and negligent driving on the part of the Driver of the appellant corporation, but the accident had occurred on account of the negligence of the claimant and, therefore, the appellant is not liable to pay the compensation.

4. The specific contention that is sought to be raised in the present appeal is that the Tribunal ought not to have relied upon the interested testimony of the claimant (PW1) and the reliance on the judgment of the criminal court without examining the author of the document based on which the criminal court has recorded a finding is not sustainable.

5. It is to be pointed out that the award of the Tribunal is only to the extent of Rs.20,000/- to which also the appellant/Transport Corporation is aggrieved, which has made the appellant to file this appeal. To appreciate the contentions advanced by the appellant, it is necessary to refer to the judgment of the Tribunal and the findings recorded therein, which necessitated the Tribunal to award the compensation.

6. The Tribunal has relied upon the evidence of PW1 Pakkirisamy, who is the claimant in this case. P.W.1 has deposed that bus capsized, on account of which, he sustained injuries. The Tribunal has also relied upon Ex.P4, copy of the judgment of the Criminal Court. Though it is contended by the appellant that the Tribunal ought not to have relied upon the interested testimony of P.W.1, however, the fact remains that the Driver of the bus has not been examined nor any other witness has been examined on behalf of the Corporation to dispute the version projected by the claimant. The Tribunal has given a finding that as per the Motor Vehicle Inspector's report, there was brake deficiency to the extent of 68% and therefore, even if there had been crossing of goats in the road, if the vehicle had been in good road worthy condition, the accident could have been averted and, therefore, fastened the negligence on the driver of the bus.

7. Once the initial evidence is adduced on the part of the claimant, then the burden shifts on the Transport Corporation to show that there was no negligence on the part of the Transport Corporation. When the contrary facts are within the special knowledge of the concerned person, it is the duty of those persons to adduce evidence. In this case, the Driver has not been examined, which is fatal to the case of the appellant/Transport Corporation. The non-examination of the driver of the appellant bus cannot be put against the claimant and only adverse inference can be drawn against the appellant. In such circumstances, the Tribunal has rightly accepted the evidence of PW1, and has given a finding fastening the negligence on the driver of the appellant bus and it does not call for any interference at the hands of this Court.

8. Insofar the quantum of compensation is concerned, a paltry sum of Rs.20,000/- has been awarded as consolidated amount towards medical expenditure, transport expenses, pain and sufferings and extra nourishment. It is also relevant to point

out that this award of Rs.20,000/- has been given in the year 2001 i.e., exactly on 02.07.2001. Almost a decade and a half has passed since the passing of the award. The award amount, as on today, is a negligible amount, considering the spiraling cost and the escalation in prices of various commodities. Therefore, the award of Rs.20,000/- cannot be said to be excessive.

9. The grounds taken by the Transport Corporation does not merit acceptance and is liable to be rejected. Accordingly, the appeal fails and the same is dismissed.

10. The appellant/Transport Corporation is directed to deposit the entire award amount along with interest at 9% p.a. from the date of petition till the date of deposit, 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 judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the claimant through RTGS within a period of two weeks thereafter.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

vsi2/GLN

To

1. Motor Accidents Claims Tribunal (Sub Court), Chidambaram.
2. The Section Officer,
V.R. Section,
High Court, Madras - 104.

C.M.A.No.2457 of 2017

SS(CO)
SP(28/03/2018)