



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.10.2017

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

WEB COPY

C.M.A(MD) No.261 of 2015

and

M.P.(MD)No.1 of 2015

The Managing Director,
Tamil Nadu State Transport Corporation,
Trichy.

... Appellant / Respondent

Vs.

C.Thangavel

... Respondent / Petitioner

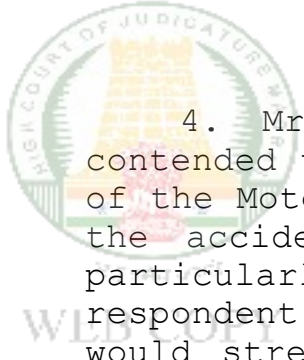
Prayer: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree passed by the Motor Accident Claims Tribunal, II Additional Sub-Court, Tiruchirappalli in M.C.O.P. No.936 of 2007, dated 10.10.2012.

For Appellant	: Mr.D.Sivaraman
For Respondent	: Mr.J.Anand Kumar

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant Transport Corporation, challenging the award dated 10.10.2012, made in M.C.O.P. No.936 of 2007 on the file of the Motor Accident Claims Tribunal- II, Additional Sub-Court, Tiruchirappalli. The said claim petition was filed by the respondent herein.

2. According to the claimant, he was travelling on 24.05.2006 in Tamil Nadu State Transport Corporation bus bearing registration No.TN-45-N-1433 which was plying from Thathiengarpettai to Seukudi. On account of rash and negligent driving of the driver of the bus, the claimant was thrown inside the bus, when it crossed a ditch, leading to causing of multiple grievous injuries. He, therefore, claimed compensation for a sum of Rs.4,00,000/- (Rupees Four Lakhs only). The Tribunal awarded sum of Rs.76,130/- (Rupees Seventy Six Thousand One Hundred and Thirty only) with interest, in favour of the claimant. Aggrieved by the same, this appeal has been filed.

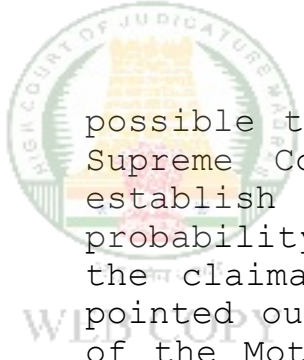


4. Mr.D.Sivaraman, the learned counsel for the appellant contended that the claim petition has been filed under Section 166 of the Motor Vehicles Act, 1988. Therefore, the onus to prove that the accident in question happened would lie on the claimant, particularly, when the very occurrence has been denied by the respondent in the M.C.O.P. The learned counsel for the claimant would strenuously contend that the claimant had proved that the accident has taken place by marking Exs.P.1 to P.7. Exs.P.3 to P.6 are documents relating to the treatment taken by him. They are not of much relevance. They do not by themselves establish that the accident in question happened. The only issue to be decided is whether the claimant had succeeded in proving that the accident had actually taken place and that the injuries suffered by him are attributable to the accident. In support of the said contention, the appellant would rely on Ex.P.1 FIR, Ex.P.2 Accident Register and Ex.P.7 Bus Ticket.

5. According to the claimant, the accident took place on 24.05.2006. If really he had suffered grievous injury as claimed by him, he would have immediately admitted himself in the hospital. It is the case of the claimant that he lodged a complaint on the same date. But a mere look at Ex.P.1 FIR would show that the complaint was lodged only on 31.05.2006. Similarly, the Accident Register Ex.P.2 is also dated 30.05.2006. Therefore, if really fractures were sustained by the claimant on 24.05.2006, when he was travelling in the bus in question, then obviously the Accident Register would not bear a later date i.e. 30.05.2006. The dates of Ex.P.1 and Ex.P.2 clearly falsify the version projected by the claimant.

6. Similarly, Ex.P.7 the bus ticket does not also inspire any confidence. This is because the said document does not appear to have been marked through the claimant. The evidence of P.W.1 was made available by the counsel for the respondent. I went through the entire testimony of the claimant. The said ticket which has been marked as Ex.P.7 does not figure anywhere in the deposition. Therefore, there is nothing on record to show that the claimant travelled as the passenger in the bus in question. In fact, to a specific question in the cross examination, the claimant fairly admitted that he has no proof to show that he travelled as passenger on the particular date in the said bus. Ex.P.8 cannot carry any conviction in view of the admission of the claimant himself.

7. The learned counsel for the claimant placed reliance on the decision of the Hon'ble Supreme Court in the case of **Bimla Devi and Others v. Himachal Road Transport Corporation and Others** reported in **2009 (1) TN MAC 700 (SC)**. In the said decision, the hon'ble Supreme Court has held that strict proof of an accident caused by a particular bus in the particular manner may not be



possible to be established by the claimant. However, the Hon'ble Supreme Court made it clear that the claimant will have to establish their case on the touch stone of preponderance of probability. Applying the said principle, I have to conclude that the claimant has not established his case at all. As already pointed out, the claim petition has been filed under Section 166 of the Motor Vehicles Act, 1988. The initial onus rests only on the claimant. It was not discharged in the case.

8. The learned counsel for the respondent tried to pick holes in the defence version of transport Corporation. But that will not advance his case. The Tribunal erroneously cast the entire burden of proof on the appellant Corporation. The appellant Corporation examined the conductor and also marked Ex.R.1 invoice to show that the bus did not ply on the route in question. The learned counsel for the respondent herein tried to cast doubt on the credibility of the said document. Even if the said invoice is eschewed out of consideration, this Court has to come to the conclusion that the claimant did not establish his case. The accident in question is said to have been happened inside the bus. Therefore, the appellant Corporation rightly examined the conductor alone. No adverse inference can be drawn from the fact that the driver was not examined. The Tribunal approached the issue from a wrong perspective. The award passed by the Tribunal is clearly erroneous. I set aside the award dated 08.01.2014 made in M.C.O.P.No.936 of 2007 on the file of the Motor Accident Claims Tribunal- II Additional Sub-Court, Tiruchirappalli.

9. This Civil Miscellaneous Appeal stands allowed. No Costs. Consequently, M.P.(MD)No.1 of 2015 is closed.

Sd/-

Assistant Registrar (CS-III)

/True copy/

Sub Assistant Registrar

To
The II Additional Subordinate Judge,
The Motor Accidents Claims Tribunal,
Tiruchirappalli.

+ 1 CC TO MR.D.Sivaraman, ADVOCATE IN SR No.81997
+ 1 CC TO MR.J.Anand Kumar, ADVOCATE IN SR No.82016
mrn/das
AE/KK/SAR-2/01.11.2017/3P/4C