



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 16.08.2017

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A. (MD) .No.894 of 2011

and

Cross Objection (MD) No.14 of 2012

and

M.P. (MD)No.1 of 2011

C.M.A. (MD)No.894 of 2011:

The Managing Director,
Tamil Nadu State Transport Corporation Limited,
Madurai Division-2,
Vannarapettai,
Tirunelveli.

.. Appellant / Respondent

Vs.

Komathi Velalar

.. Respondent / Petitioner

Prayer:- Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the decree and judgment dated 16.12.2005 and made in M.C.O.P.No.147 of 2004 on the file of the Additional Motor Accidents Claims Tribunal and Additional Sub Court, Tenkasi.

For Appellant : Mr.R.Janakiramulu

For Respondent : Mr.S.Ramesh @ Ramiah

Cross Objection (MD)No.14 of 2012:

Komathi Velalar

.. Cross Objectitioner/Respondent

Vs.

The Managing Director,
Tamil Nadu State Transport Corporation Limited,
Madurai Division-2,
Vannarapettai,
Tirunelveli.

.. Respondent / Appellant

Prayer:- Cross Appeal filed under Order 41 Rule 22 CPC against the award, dated 16.12.2005 made in M.C.O.P.No.147 of 2004 on the file of the Additional Motor Accidents Claims Tribunal and Additional Sub Court, Tenkasi.



For Cross appellant : Mr.S.Ramesh @ Ramiah

For Respondent :Mr.R.Janakiramulu

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C O M M O N J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company against the award, dated 16.12.2005 made in M.C.O.P.No.147 of 2004 by the learned Additional Subordinate Judge, Additional Motor Accidents Claims Tribunal, Tenkasi.

2.The appellant / Insurance Company is the respondent and the respondent is the claimant. The claimant claimed a sum of Rs.3,00,000/- as compensation before the Tribunal for the injuries sustained by him in an accident.

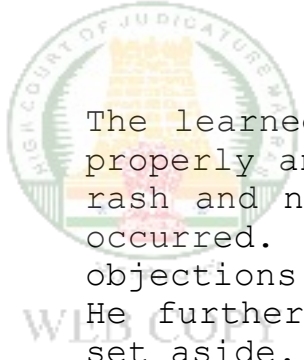
3.The facts of the case are as follows: -

It is the case of the respondent / claimant before the Tribunal that on 29.04.2003, at about 11.30 a.m., the petitioner was travelling in a bus bearing registration No.TN 72 N 0641 from Tharukurichi to Tenkasi and the petitioner rest his left arm on the window of the bus and that the left hand came in contact with an electricity poll and thereby he sustained injuries. According to the claimant, he was doing pottery business and earned Rs.4,000/- per month and hence, he claimed compensation before the Tribunal.

4.The case of the claimant was resisted by the respondent / Insurance Company by filing a counter affidavit. According to the respondent, the driver had driven the bus carefully and due to the negligence of the claimant only, the accident had taken place and hence, the respondent is not liable to pay compensation. It is further stated that there is no proof for the income of the claimant and in the absence of the same, the respondent / Insurance prayed for the dismissal of the claim petition.

5.Before the Tribunal on the side of the claimant as many as 11 documents were marked as Exs.P1 to P11 and P.W.1 and P.W.2 were examined as witnesses and on the side of the respondents, no document was marked and R.W.1 was examined as witness. After considering the oral and documentary evidence, the Tribunal directed the appellant / Insurance Company to pay the compensation of Rs.2,89,000/- with 9% interest per annum. Against which, the present appeal is filed by the appellant / Insurance Company.

6.The learned counsel for the appellant / Insurance Company <https://hcmis.court.gov.in/judices> the learned Judge failed to see that accident took place only due to the negligence of claimant. The learned Judge failed to consider the contributory negligence of the claimant.



The learned Judge did not consider the evidence of the respondent properly and on assumption came to the conclusion that only due to rash and negligent driving of the driver of the bus, the accident occurred. The learned counsel for the appellant also raised objections with regard to occupation and income of the claimant. He further contended that the finding of the Tribunal has to be set aside.

7. Per contra, the learned counsel for the respondent / claimant has made his submissions by supporting the award passed by the Tribunal and also argued that the award may be enhanced.

8. Heard the learned counsel for the appellant / Insurance Company and the learned counsel for the respondent / claimant and perused the records carefully.

9. According to the claimant, the accident occurred only due to rash and negligent driving by driver of the bus. To substantiate his case, he examined P.W.1 as an eye witness to speak about the manner in which the accident occurred and P.W.2- Doctor and marked FIR given against the driver of the bus. The appellant has not disproved the evidence of P.W.1 that he was not an eye witness and only interested witness.

10. In the circumstance, the conclusion of the learned Judge that the accident occurred only due to rash and negligent act of the driver of the bus, cannot be set aside. The learned Judge came to the conclusion only after appreciating all the materials on record in proper perspective. As far as quantum of compensation is concerned, the learned Judge has correctly arrived the compensation payable to the respondents. The compensation awarded is just compensation and not excessive. The appeal is devoid of merits and therefore, liable to be dismissed.

11. In the result, the award dated 16.12.2005 in M.C.O.P.No. 147 of 2004 passed by the learned Additional Subordinate Judge, Additional Motor Accidents Claims Tribunal, Tenkasi, is hereby confirmed and the Civil Miscellaneous Appeal is dismissed and the Cross Objection filed by the claimant is closed. The appellant/Transport Corporation is directed to deposit the entire award amount with accrued interests and costs, within a period of eight weeks from the date of receipt of a copy of this order, if not already deposited and on such deposit being made, the respondent/claimant is permitted to withdraw the same with proportionate interests and costs, without filing any formal application before the Tribunal. No Costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-II)



To

1. The Additional Subordinate Judge,
Additional Motor Accidents Claims Tribunal,
Tenkasi.

2. The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

+ 1 cc TO Mr.R.Janakiramulu , Advocate in SR No. 73037

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AE/SKN RSK/SAR2/05.10.2017/4P/4C

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