

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 31.10.2018

CORAM

THE HONOURABLE TMT.JUSTICE S.RAMATHILAGAM

CMA.No.1355 of 2006

and C.M.P.No.5854 of 2006

The Managing Director,
Tamil Nadu State Transport Corporation Limited,
Kancheepuram.

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Appellant/1st Respondent

Versus

1.P.Thanigainathan
2.Bakthavatchalam Reddiar
Dars Agencies, Indian Oil Dealers,
Arani Road, Vandavasi

3. United India Insurance Co. Ltd.,
Divisional Office,
Ranipet.

....

Respondents/Claimant/2nd & 3rd respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the Judgment and Decree dated 19.01.2005 made in M.A.C.T.O.P.No.239 of 1999 on the file of the Motor Accident Claims Tribunal, Arani.

For Appellant : Mr. P.G.Padmanabhan

For Respondents: Mr. J.Chandran for R3

JUDGMENT

This Civil Miscellaneous Appeal is directed against the Judgment and Decree dated 19.01.2005 made in M.A.C.T.O.P.No.239 of 1999 on the file of the Motor Accident Claims Tribunal, Arani.

2. The brief facts of the case are as follows:-

On 20.04.1998, the claimant was proceeding to Kancheepuram to attend the Tamil Nadu Professional Court Entrance Examination. At about 3.30 p.m., while he was travelling in the first respondent bearing Registration No.TN-57-0898, the said bus was tried to over take a car bearing Registration No.TMD-88-8424, which was going ahead of the said bus, dashed against the Tanker Lorry bearing Registration No.TN-25-Z-6237, which belonging to the second respondent and insured with the third respondent Insurance Company. Due to the said accident, the front portion of the said bus got damaged and the driver of the lorry also sustained severe injuries and he died within a short time. Hence, it is stated that the driver of the said bus had

driven in a rash and negligent manner and caused the accident. The claimant sustained severe injuries and claimed a sum of Rs.6,00,000/- as compensation.

3. The Appellant/Transport Corporation, in the counter statement, has denied the mode of accident and negligent driving on the part of the driver of the bus as stated by the claimant. It is also stated that the said driver of the bus had driven in a very slow manner in keeping the left side of the road, it is a Tanker Lorry, by its rash and negligent manner by trying towards the bus and inspite of the bus applied brake and negligence act and dashed against the bus. Hence, the mode of accident was totally denied by the transport Corporation. It is also denied that the bus was trying to over take the Car and dashed against the lorry. The other aspects regarding the claim made by the claimant for injury, disability, loss of income and medical expenses are excessive and denied.

4. The Tribunal, after analyzing the evidence and documents, has given a finding that due to the rash and negligent driving on the part of the bus, the accident occurred. It is seen that based on the registration of Criminal case and also the FIR and evidence and documents, the tribunal has fixed the liability on the part of the driver of the bus. While, determination of compensation, the tribunal has observed that the nature of injury, age, occupation, loss of income and awarded a sum of Rs.1,03,500/-. Aggrieved against the liability and also the quantum, the appellant/Transport Corporation has preferred this appeal.

5. In the grounds of appeal, it has been stated that the sum awarded by the Tribunal is against the principles in similar cases. The finding of the tribunal in fixing the liability on the bus is aggrieved and it is also stated that the accident had occurred due to the negligence on the part of the driver of the tanker lorry, who swerved to the right side threateningly and came towards the appellant's corporation bus and dashed. The other ground raised by the appellant is that the tribunal has failed to see the mode of accident on the part of both the drivers and ought to have been fixed the contributory negligence equally on both the drivers. The determination of the sum awarded by the tribunal is excessive on various heads regarding medical expenses, loss of education, transport charges, pain and suffering not proper.

6. Heard the learned counsel for the appellant and perused the materials available on record.

7. It is argued by the appellant that there are two vehicles involved in the accident, whereas, the tribunal has

fixed the liability only on the driver of the bus, which insured with the appellant. RW1 was also examined before the tribunal and the tribunal has not considered the evidence of RW1 and only based on the evidence of PW1, the tribunal has passed the award.

8. On a perusal of Ex.P1, the FIR, it is seen that and the complaint has been preferred for the negligence act on the part of the driver of the bus. It is also brought to the notice of this Court that the claimant of the alleged lorry has preferred an application before the Additional Sub Court, Thiruvannamalai. On the side of the claimant, Exs.P3-Mark Sheet and P4-Travels Receipt have been placed before the tribunal. Hence, the tribunal has come to the conclusion that the rash and negligent driving was on the part of the driver of the bus bearing Registration No.TN-57-0898 and accordingly, fixed the liability on the transport corporation, in which the alleged vehicle is insured. It is also observed that the claimant has completed his twelfth standard and at the time of accident he was proceeding to attend his entrance examination for improving his education qualification. The injuries sustained by the claimant were very much proved. Ex.P5 reveals the fact that he sustained severe injury on his eye and Ex.P7- Medical Bills of Sankara Nethralaya Hospital were also produced before the tribunal. The injuries sustained by the claimant in his eye cannot be measured by way of money. The doctor assessed the disability at 30% for the loss of eye sight and the tribunal has also considered them as grievous injuries.

9. Considering the nature of injury, disability sustained by the claimant, the Tribunal has awarded a sum of Rs.30,000/- for disability by taking disability at 30%. The document relating to medical expenses filed by way of Exs.P7 and P8, the tribunal has awarded a sum of Rs.50,000/- towards medical expenses. Based on the above said documents, a sum of Rs.10,000/- was also awarded to the claimant, who has lost his opportunity to attend the examination. The sum awarded for transport expenses which were also proved by way of Ex.P4 and the sum awarded at Rs.1,500/- for transport expenses is also very much reasonable. Hence, this Court is of the opinion that the sum awarded for transport expenses, pain and suffering and medical expenses are very much reasonable and proper. This Court finds no ground to modify the award passed by the tribunal, since the same is based on the materials and evidence. The award passed by the Tribunal in M.A.C.T.O.P.No.239 of 1999 dated 19.01.2005 is confirmed.

10. In the result, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed

11. Accordingly, the appellant/Transport Corporation is directed to deposit the entire award amount as awarded by the Tribunal with interest and costs, before the Tribunal, after adjusting the amount, if any, already deposited, 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 same to the claimant's bank account through RTGS within one week thereon.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

lpp

To

1. The Motor Accident Claims Tribunal,
Arani.

Copy to:

The Section Officer,
V.R.Section,
High Court, Madras.

+lcc to Mr. P.G.Padmanabhan, Advocate sr.74745

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