

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 02.11.2018

CORAM:

THE HONOURABLE Tmt. JUSTICE S. RAMATHILAGAM

C.M.A.No.1805 of 2005
and
C.M.P.No.10011 of 2005

New India Assurance Co., Ltd.,
No.66, W.B. Road,
Trichy - 620 008.

...Appellant / 2nd Respondent

Versus

1. K.I.John ...1st Respondent / Claimant
2. S.Qrseeth

3. The Managing Director
State Express Transport Corporation,
Pallavan Salai
Chennai - 600 002. ...2nd & 3rd Respondent /
Respondents 1 and 3

Prayer : Civil Miscellaneous Appeal filed under Sections 173 of
Motor Vehicles Act, against the Award and Decree dated
31.12.2004 passed in M.C.O.P.No.104 of 2004 on the file of the
Motor Accident Claims Tribunal, (Additional Special Court),
Krishnagiri.

For Appellant : Mr. R. Sivakumar

For Respondents : No Appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the
Award and Decree dated 31.12.2004 made in M.C.O.P.No.104 of 2004
on the file of the Motor Accident Claims Tribunal (Additional
Special Court), Krishnagiri.

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

On 19.01.2004, the claimant was travelling in a SETC bus
bearing Registration No.TN-07-N-8396 belonging to the third
respondent. At about 12.00 hours, when the said bus was
proceeding from Krishnagiri to Bargur, at that time, the

G.B.S.Town bus bearing Registration No.TN-45-H-1771 belonging to the first respondent and insured with the second respondent, came from Elathagiri towards Krishnagiri, in a rash and negligent manner, as a result both the vehicles dashed each other and accident occurred. Due to the said accident, the claimant and some other passengers in the both vehicles have sustained multiple grievous injuries. A criminal case was registered against the driver of the G.B.S.Town bus in Crime No.15 of 2004. The claimant sustained grievous injuries and he also spent huge money for medical expenses and also sustained disability. The claimant has claimed a sum of Rs.1,00,000/- as compensation.

3. The Insurance Company/1st respondent before the Tribunal, in the counter statement, has denied the fact that the accident occurred due to the rash and negligent driving of both the drivers of SETC bus and G.B.S.Town bus. The other aspect regarding the claim made by the claimant as compensation under the various heads is also stated as highly excessive and without any proof.

4. The Tribunal, upon analyzing the evidence and documents placed before it, has given a finding that the driver of the first respondent vehicle is responsible for the accident and exonerated the the third respondent from its liability. The Tribunal has awarded a sum of Rs.68,500/- as compensation for injury, pain and suffering, loss of income and medical expenses incurred by the claimant. Aggrieved against the said award, the Insurance Company/1st respondent before the Tribunal has preferred this appeal.

5. In the grounds of appeal, it has been stated that the Tribunal has committed error by fixing the liability on the driver of the bus bearing Registration No.TN-45-H-1771, which belongs to the second respondent and insured with the appellant/Insurance Company. When there is a statement by the claimant that both the drivers are responsible for rash and negligent manner of the driving, the liability fixed by the Tribunal on the appellant/Insurance Company is not justified. The Tribunal has also committed an error by relying Ex.P1-FIR, which is given by the driver of the third respondent and came to the conclusion based on the same. The other aspects regarding the sum awarded by the Tribunal as compensation for the nature of injury, disability and medical expenses were also denied.

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

7. On the side of the appellant, it is argued that when the claimant himself has made a statement and deposed before the Tribunal that the accident occurred only due to the rash and negligent driving on the part of the driver of both the vehicles, fixing of liability only on the appellant/Insurance Company by the Tribunal is not proper and justified and without any evidence.

8. On perusal of records, it is observed that Ex.P1-FIR was registered against the driver of the second respondent and the case also registered against him. Based on the FIR, the Tribunal has fixed the liability on the second respondent driver. It is also argued by the appellant that the passengers and both the drivers have sustained injuries and the statement of the claimant was also to the effect that both the drivers are responsible for the accident, whereas, the Tribunal has fixed the liability based on the FIR which is as registered against the first respondent is not justified. At the same time, it is also brought to the notice of this Court that the appellant/Insurance Company has preferred the CRP against the liability fixed on them and the same was dismissed.

9. Based on the evidence of the passengers travelled in the bus, it is clear that the driver of the bus belonging to the second respondent/appellant herein suddenly came across the bus belonging to the third respondent and caused the accident. There is no objection or any other proceedings has been taken against the registration of FIR, registered against the second respondent.

10. Since, the findings of the Tribunal are based on the evidence and documents, the order of the Tribunal is just and proper. This Court finds no ground to interfere with the order passed by the Tribunal. Accordingly, the order of the Tribunal is confirmed. This Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

11. The appellant/Insurance Company is directed to deposit the entire award amount 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-IV)

//True Copy//

pds/lpp

Sub Assistant Registrar

To

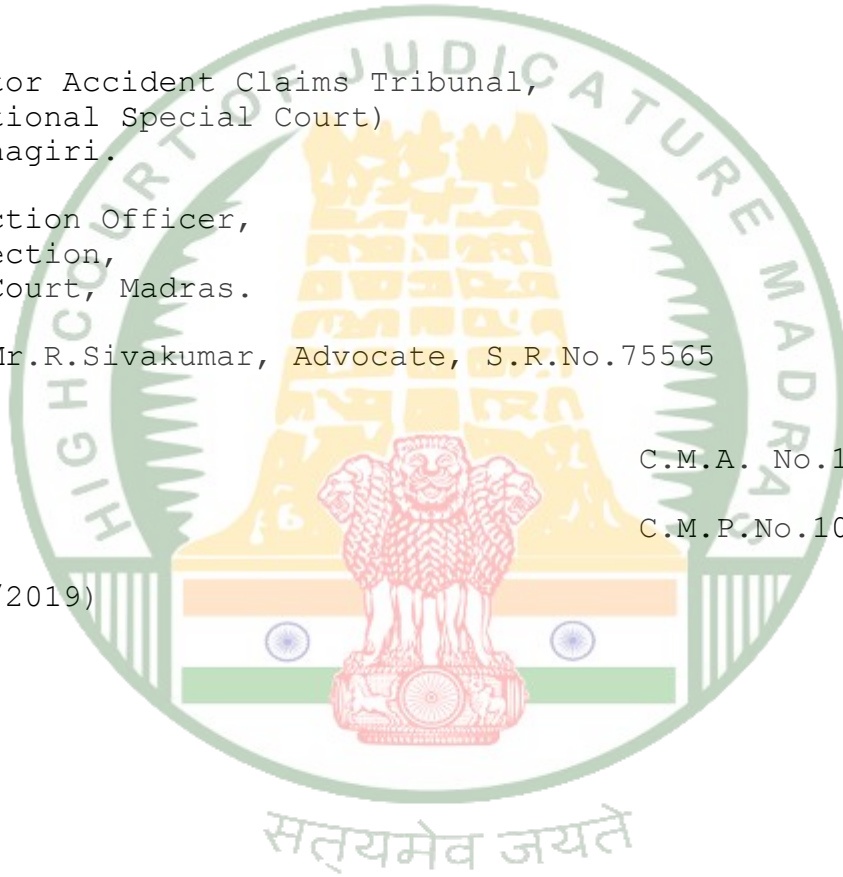
1. The Motor Accident Claims Tribunal,
(Additional Special Court)
Krishnagiri.

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

+1 cc to Mr.R.Sivakumar, Advocate, S.R.No.75565

C.M.A. No.1805 of 2005
and
C.M.P.No.10011 of 2005

VD(CO)
SSM(24/06/2019)



WEB COPY