

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 04.10.2018

CORAM:

THE HONOURABLE Mrs.JUSTICE S.RAMATHILAGAM

C.M.A.No.2368 of 2006

The Director,
Tamil Nadu Fire Service Department,
Chennai.

.. Appellant/Respondent

Vs.

G.Thanikachalam

..Respondent/Petitioner/
Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree made in M.C.O.P.No.1642 of 2003, dated 31.01.2006 on the file of Motor Accident Claims Tribunal (1st Additional District Judge), Krishnagiri at Dharmapuri District.

For Appellant : Mr.M.Venkatesh
Govt.Advocate (CS)

For Respondent : Mr.Terry Chella Raj

JUDGMENT

The appellant/Fire Service Department has preferred this appeal against the judgment and decree passed in M.C.O.P.No.1642 of 2003, on the file of the 1st Additional District Judge, (Motor Accident Claims Tribunal) Krishnagiri at Dharmapuri District, dated 31.01.2006.

2. The brief facts leading to the Claim Application is as follows:-

On 19.05.2002, the petitioner/respondent herein was proceeding in a TVS 50 Motor-cycle bearing registration No.TN 23 R 9959 from Tirupur towards Sundarampalli by keeping left side of the road and at that time, at about 0.15 hours on 20.05.2002, a Fire Service Lorry bearing registration No.TAJ 5683 belonging to the respondent/appellant herein, driven by its driver in a

rash and negligent manner with uncontrollable speed which came behind the claimant's vehicle and suddenly, hit on the petitioner's TVS moped, resulting which the petitioner sustained grievous injuries and the accident occurred only due to the rash and negligent driving of the Fire service lorry and hence, the petitioner claimed a sum of Rs.5,00,000/- towards compensation.

3. The respondent in the counter statement has averred that the said respondent's vehicle with crew left the Fire Station at 23-56 hours on 19.05.2002. When it was nearing the Fire shop, the said Fire Service vehicle turned at Kannanapatti street and a TVS 50 moped dashed the rear side of the Fire Service vehicle and the rider of the moped fell down.

4. It has been stated that considering the public services of Fire Service Department, the Fire Service vehicle using the right of way was taken to the fire spot and put out the fire leaving the hit person at the care of a nearby vendor. Therefore, the accident seems to have been occurred not due to the rash and negligent driving on the part of the driver of the Fire service vehicle, but, due to the rider of the TVS moped.

5. The Tribunal after analyzing evidence and documents placed before it, has given a finding that the said Fire Service vehicle was permitted to go in a speed of 60 kilometre as per G.O marked as Exhibit R2 and further the Criminal Case was registered against the said driver was also dismissed. Further, evidence regarding the fact that it is the petitioner, who came behind the Fire Service vehicle, and dashed against the same and in the final, it has come to the conclusion that the Fire Service vehicle was parked in the middle of the road and there was also lack of attention on the part of the driver of the said vehicle. Hence, the Tribunal has clearly given a finding that even accepting the evidence of R.W.1, the parking of the appellant's vehicle in the middle of the road itself amounts to negligence and hence, the negligence is on the part of the Fire Service vehicle. Aggrieved against the said finding, the appellant has preferred this appeal.

6. The grounds stated in the appeal are that there would not be any negligence on the part of the driver of the appellant, since the appellant vehicle would go only at the speed of 60 kilometre as per G.O referred in Exhibit R2 and Exhibit R1, the judgment of the Criminal Court was not considered by the tribunal. Further, the grievance raised by the appellant is that the accident occurred only due to the rash and negligent driving of the claimant/1st respondent herein, since he only dashed at the back side of the appellant's vehicle. Apart from the negligence and liability, the other grounds made only formal. On the aspect of the quantum, also the appellant is not disputing the amount determined by the tribunal.

7. Heard both sides and perused the records.

8. On perusal of records, it is observed that the accident took place at early morning 0.15 hours. The facts and evidence placed before the tribunal is that the appellant's Fire Service vehicle is permitted to go at the speed of 60 kilometers and as such, it was proceeding to the Fire stop whereas, it is the claimant's vehicle which was driven in a rash and negligent manner and hit at the back of the said Fire Service vehicle and invited the accident. The tribunal has also observed that based on the two various evidence, one that it is the claimant's vehicle that was driven by him in a rash and negligent manner and the other part of the evidence is that it is the appellant's vehicle which was stopped in the centre of the road to make an enquiry with regard to the fire spot.

9. Balancing the evidence on both sides, it is the appellant's vehicle that has blocked the oncoming vehicles and further stating the time of the accident is on the night of 19 and 20.05.2002, there cannot be any rash and negligent act on the part of the claimant. Hence, it is the negligence on the part of the appellant's vehicle, the accident had occurred. The finding is based on the evidence and also the other aspects with regard to the distance that has to be maintained by the vehicle and also the speed limit given to the Fire Service vehicle. But, in this case it is observed that it is the appellant's vehicle which was stopped in the middle of the road and it resulted in the claimant's vehicle hitting of the back of the appellant's vehicle.

10. Hence, the finding of the tribunal is reasonable and it does not require any interference. Further, by considering the age, income, occupation, the nature of injury and the disability sustained due to the injury, the Tribunal has awarded a sum of Rs.1,83,000/-. It is also observed that the claimant was taking treatment as an in-patient for 10 days and awarded sums under various heads and the sum awarded by the tribunal is Rs.1,83,000/- is also quite reasonable. It is also further argued on the side of the appellant that the appellant has also deposited the amount and there need not be any further issue on that aspect and the respondent is permitted to withdraw the same and the finding of the tribunal is proper, accordingly, this Civil Miscellaneous Appeal is dismissed. No costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

The 1st Additional District Judge,
(Motor Accident Claims Tribunal)
Krishnagiri at Dharmapuri

+1cc to Mr.M.Malar, Advocate, S.R.No.68607
+1cc to the Government Pleader, S.R.No.68613

C.M.A.No.2368 of 2006

VBA (CO)
SSM(30/11/2018)



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