

IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated : 02.11.2018
CORAM
THE HONOURABLE Mrs.JUSTICE S.RAMATHILAGAM
CMA.No.3494 of 2006
and
M.P.No.1 of 2006

The Managing Director,
Tamil Nadu State Transport
Corporation Ltd.,
Erode

... Appellant/2nd Respondent

Versus

1. Manickavasagam ... 1st Respondent/Petitioner

2. The National Insurance Company Ltd.,
Kankeyam. ... 2nd Respondent/3rd Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the judgment and award made in M.C.O.P.No.356 of 2001 dated 10.01.2006 on the file of Motor Accidents Claims Tribunal (Sub Court), Udumalaipet.

For Appellant : Mr.K.J.Sivakumar

For Respondents: No appearance

J U D G M E N T

The Criminal Miscellaneous Appeal has been preferred against the judgment and award in M.C.O.P.No.356 of 2001 dated 10.01.2006 on the file of Motor Accidents Claims Tribunal (Sub Court), Udumalaipet.

2. The brief facts of the case leading to the claim application are as follows:

On 22.08.2000 at about 11.00 a.m., when the petitioner was travelling in a motor cycle bearing Registration No.TN 33 V 2084, with very much care and caution from Kariyur to Bagavan Koil Road, near Palani Goundenavalasu Sudukattu Privu, a bus bearing Registration No.TN 33 N 0326 which came in the opposite direction with great speed and without care and caution and without blowing horn and dashed against the motor cycle. Due to which, the petitioner and the other persons travelled in the

said two wheeler, one Senthil Kumar sustained multiple grievous injuries all over the body and immediately, the petitioner was taken to Government Hospital, Dharapuram and thereafter, he was given further treatment at various hospitals and he has also sustained disability. Hence, for the injuries sustained by him and for the disability, loss of income, medical expenses, the petitioner claimed a sum of Rs.1,00,000/- as compensation.

3. The respondent/Transport Corporation has denied the mode of accident as stated by the claimant. It is stated that the negligence is on the part of the claimant, who without noticing the bus coming in the opposite direction, driven his two wheeler in a rash and negligent manner and hit against the right side of the respondent Transport bus. Therefore, the petitioner is solely responsible for the accident and this respondent is not liable to pay the compensation. The other aspect regarding the sum claimed as compensation is exorbitant and imaginary and hence, sought for dismissal of the claim application.

4. The Tribunal after analyzing the evidence and documents placed before it has given finding that the accident had occurred only due to the rash and negligent driving on the part of the driver of the Transport bus. The Tribunal has also assessed the compensation based on the nature of injury and the disability and also the medical expenses incurred by the claimant and awarded a sum of Rs.45,000/- as compensation. Aggrieved against the liability and the sum awarded as compensation, the Transport Corporation has preferred this appeal to set aside the award passed by the Tribunal.

5. In the grounds of appeal, the appellant/Insurance Company has stated that the Tribunal has failed to note the fact that the driver of the Corporation bus was driven the bus in a slow and cautious manner at the time of the accident. Regarding the disability, the Doctor who treated the claimant was not examined before the Tribunal. It is also stated that the sum awarded at Rs.15,000/- for disability is highly excessive. The sum awarded for loss of income and other heads are all on the higher side without any proof and documents. The appellant has also advanced the argument relating to the liability and the compensation.

6. Heard the appellant side and perused the documents available on record.

7. On a perusal of the records, it is observed that Ex.P1-the FIR and Ex.P3-Motor Vehicle Inspector report and Ex.P4-charge sheet. It is seen that the evidence of R.W.1 was to that effect since the place of accident is a curve road, the driver of the said bus cannot drive the bus in a rash and negligent manner PW1 has deposed that he did not drive the two wheeler in

a rash and negligent manner and it is the transport corporation bus, which came in a rash and negligent manner and caused the accident. Hence, the criminal case has been registered against the driver of the bus. It can very well be seen from the Exs.1 & 4. Hence, based on the evidence, the Tribunal has fixed the rash and negligent driving on the part of the driver of the Transport Corporation bus. It is also seen that the driver of the said Corporation bus was not examined before the Tribunal. Hence, the Tribunal by considering the fact that the criminal case registered against the bus driver and non-examination on the part of the respondent, has fixed the negligence on the part of the respondent bus which is purely based on documents and petitioner's side evidence, which does not require any interference. The other aspect regarding the sum awarded as compensation, it is observed that Ex.P2-the wound certificate and while perusing the same, the petitioner had sustained grievous injury and Ex.P6, discharge summary also reveals the fact that the petitioner was treated for the said injury. The discharge summary also reveals the fact that the claimant was taken treatment as inpatient during the relevant period and he has also incurred medical expenses and the same was proved by way of Ex.P7 to Ex.P10. It is also stated that the petitioner was earning Rs.5,000/- per month by way of doing agricultural work and in the absence of any disability, the Tribunal has calculated the sum by awarding Rs.15,000/- for grievous injury that was sustained by him and as far as the medical expenses is concerned, a sum of Rs.15,000/- was awarded by the Tribunal by perusing Ex.P7 to Ex.P10 and the sum awarded at Rs.5,000/- for the loss of income during the treatment period is also not on the higher side, since it is clearly proved that the claimant was under treatment because of the grievous injuries sustained in the accident. The sum awarded for nourishment at Rs.5,000/-, Rs.5000/- for pain and sufferings are also very much reasonable. Hence, the sum determined by the Tribunal at Rs.45,000/- under the above said heads, based on the evidence with regard to nature of injury, treatment and loss of income is very much reasonable and proper and does not require any interference and the award and liability fixed by the Tribunal is confirmed.

8. In the result, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

9. Accordingly, the Appellant/Transport Corporation is directed to deposit the entire Award amount along with interest as awarded by the Tribunal, if not 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(CCC)

//True Copy//

Sub Assistant Registrar

gbi/uma

To

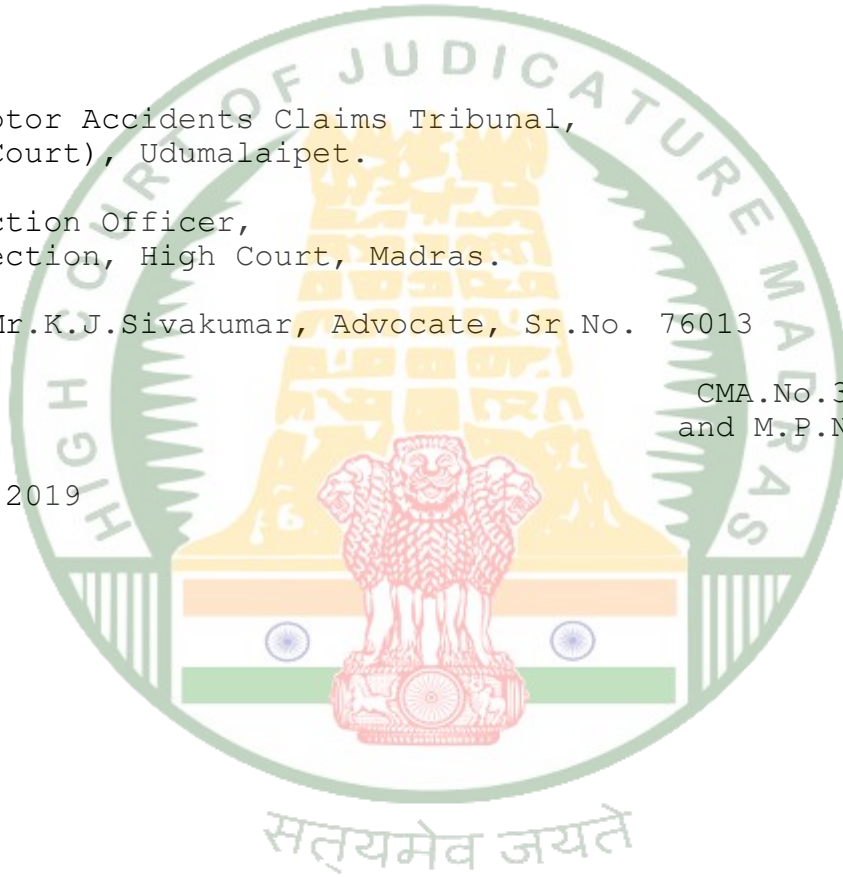
1. The Motor Accidents Claims Tribunal,
(Sub Court), Udumalaipet.

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

+1 cc to Mr.K.J.Sivakumar, Advocate, Sr.No. 76013

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PM(CO)
CSL/17.06.2019



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