

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.11.2018

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.2642 of 2009

United India Insurance Co. Ltd
38, Anna Salai,
Chennai -2

... Appellant/2nd Respondent

...Vs...

1.Santhi

... R1/Petitioner

2.Sun Pharma Products,
No.13,80 Feet Road,
Banganahalli, Bangalore-68.

3.Tamilnadu State Transport Corporation,
Villupuram,
represented by Managing Director,
Division-III, Kancheepuram.

...Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Award, dated 29.09.2008 made in M.C.O.P.No.4111 of 2000 on the file of the Motor Accidents Claims Tribunal, Fast Track Court-I, Chennai.

For Appellant : Mr.S.Arunkumar
For Respondent : Mr.K.J.Sivakumar for R3
: Not ready notice to R1 & R2

JUDGMENT

The appellant is the United India Insurance Company Limited, No.38, Anna Salai, Chennai. The First respondent/claimant filed a claim petition in M.C.O.P.No.4111 of 2000, on the file of the Motor Accidents Claims Tribunal, Fast Track Court-I, Chennai, seeking compensation of Rs.4,00,000/- for the injuries sustained in road accident that took place on 17.03.2000.

2. The brief facts of the case of the first respondent/claimant are as follows:

On 17.3.2000 the first respondent/claimant along with others was travelling in a Tata van bearing registration No. KA 05 6521 at Kancheepuram-Vellore Highways. At about 12.15pm.,

when the van was nearing Balu Chetty Chattiram Police Station, a speedy bus belonging to the Tamil Nadu State Transport Corporation bearing registration No.TN 21 N 0436, hit the van as a result of which the first respondent/claimant sustained injuries.

3. The trial Court after analyzing the evidence on record held that the driver of the van bearing registration No.KA 05 6521 and the driver of the Tamil Nadu State Transport Corporation bus bearing registration No.TN 21 N 0436, were rash and negligent in driving their respective vehicles. However in the concluding paragraphs, he has directed the owner of the van and the insurer of the van to pay the compensation of Rs.90,000/- to the first respondent/claimant.

4. Aggrieved over the same, the present appeal is filed by the United India Insurance Company Limited.

5. Mr.S.Arunkumar, learned counsel appearing for the appellant contended that though the trial Court has fixed the responsibility equally on the drivers of both the van and the Tamil Nadu State Transport Corporation bus, had directed the United India Insurance Company to pay the compensation amount to the first respondent/claimant together with interest at the rate of 7.5% per annum.

6. A perusal of the records shows that in the same accident, some persons died while others sustained injuries. All those persons have filed various claim petitions and in fact, in some of the cases, appeals in C.M.A.Nos.2984 to 2986 of 2004 and C.M.A.Nos. 3224 to 3226 of 2004 were filed and a single Judge of this Court in paragraph 6 of the order dated 02.12.2010 has held thus :

"6. To prove the manner of accident, the respondents/claimants have reiterated the averments made in the claim petition. Though the appellant-Transport Corporation, in its counter affidavit, has contended that the driver of the bus had driven the vehicle cautiously and the van driver, who came in the opposite direction at great speed, dashed against the bus, the driver of the bus was not examined to prove the same. Rash and negligent driving is a personal act of the driver of the vehicle, who caused of the accident. In the case on hand, R.W.1, Conductor has been examined on behalf of the transport corporation. When rash and negligent driving by the driver of the bus owned by the transport corporation is alleged, it is for the corporation to rebut the manner of accident. Perusal of the judgment shows

that the transport corporation has not made any efforts to summon the driver of the bus. At best R.W.1, conductor, can lead only a supportive evidence. But he cannot speak on behalf of the driver, as regards the manner of accident. Though Ex.P1 - FIR has been filed at the instance of the Village Administrative Officer, claiming negligence on both the drivers and he has not witnessed the accident. Testing the finding of the Tribunal, regarding negligence by applying the principles of preponderance of probability, this Court is of the considered view that there is absolutely no contra material, let in by the Corporation, enabling this Court to differ from the finding recorded by the Tribunal and it cannot be said to be perverse or as a case of no evidence, warranting reversal. The finding of the Tribunal with regard to negligence, is confirmed."

7. Since, no evidence was adduced by the Tamil Nadu State Transport Corporation to rebut the manner of the accident, especially, when the rash and negligent driving by the driver of the bus owned by the Transport Corporation is alleged, the trial Court has committed an error in holding that the driver of the van, as well as the driver of the bus are equally responsible for the accident.

8. Therefore, the order passed by the learned I Additional District Judge, (Fast Track Court), Chennai is liable to be set aside as regards the negligence aspect is concerned. The appellant has not questioned quantum of compensation awarded by the tribunal and the first respondent/claimant also did not file any appeal or cross objection for enhancement of compensation. A perusal of the Award also shows that the award passed by the tribunal is very reasonable and in the facts and circumstances, the Tamil Nadu State Transport Corporation is directed to pay the award amount of Rs.90,000/- to the first respondent/claimant within a period of 4 weeks from the date of receipt of a copy of this order.

9. With the above observations the Civil Miscellaneous Appeal is allowed. No costs. The Insurance Company can withdraw the amount if already deposited.

Sd/-

Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

mpa/ssi

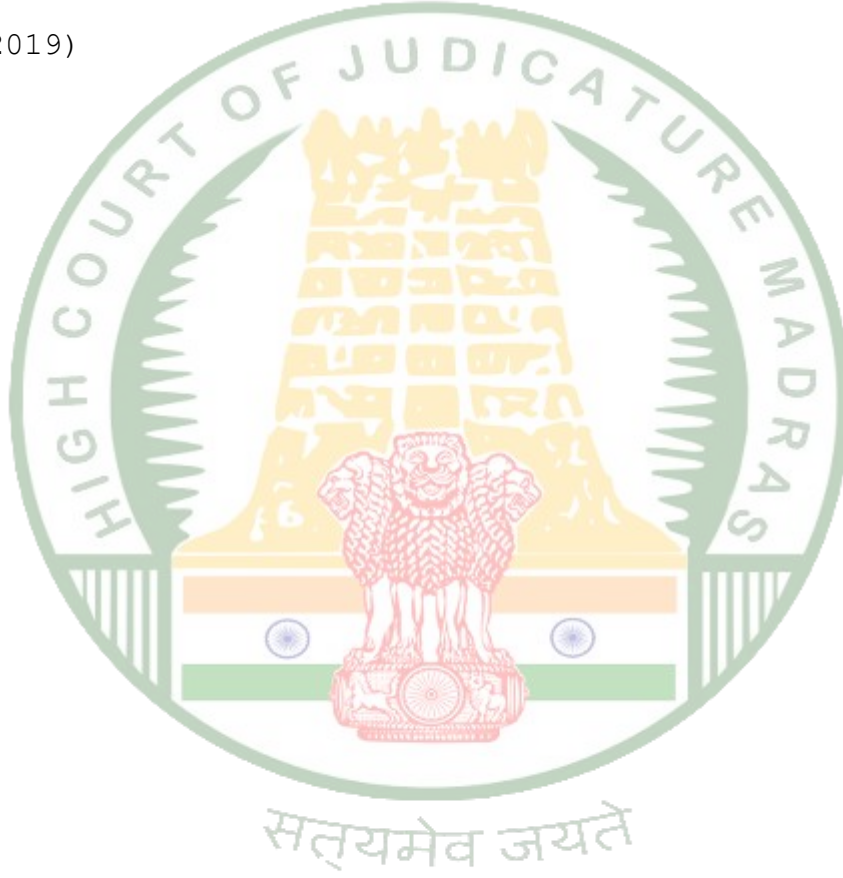
To

1. The Motor Accidents Claims Tribunal,
Fast Track Court-I, Chennai.

+1cc to Mr.S.Arun Kumar, Advocate, S.R.No. 79117

C.M.A.No.2642 of 2009

RV (CO)
GN (24/01/2019)



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