

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.10.2018

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.3672 of 2010 And
M.P.No.1 of 2010

Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Coimbatore Division I,
37, Mettupalayam Road,
Coimbatore.

..Appellant/Respondent

..Vs..

S.Vignesh

.Respondent/Petitioner

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 16.10.2008 passed in M.C.O.P.No.1312 of 2004 by the learned Judge, Fast Track Court, Motor Accident Claims Tribunal, Namakkal.

For Appellant : Mr.S.S.Swaminathan

For Respondent : Mr.Ma.P.Thangavel

J U D G M E N T

The instant appeal has been filed by the Appellant Transport Corporation challenging the award dated 16.10.2008 passed in M.C.O.P.No.1312 of 2004 by the learned Judge, Fast Track Court, Motor Accident Claims Tribunal, Namakkal.

2. The brief facts leading to the filing of the instant appeal are as follows:

(i) The respondent sustained injuries on 06.06.2004 as a result of an accident caused by a Bus bearing registration No.TN-38-N-0133 owned by the appellant Transport Corporation.

(ii) The respondent preferred a claim before the Motor Accident Claims Tribunal in M.C.O.P.No.1312 of 2004 seeking a

compensation of Rs.6,00,000/-. The Motor Accident Claims Tribunal, by its award dated 16.10.2008 in M.C.O.P.No.1312 of 2004 directed the Appellant to pay the respondent a sum of Rs.1,65,000/- together with interest at the rate of 7.5% per annum from the date of claim till the date of realization.

(iii) Aggrieved by the Award dated 16.10.2008 passed in M.C.O.P.No.1312 of 2004, the instant appeal has been filed by the Appellant/Transport Corporation.

3. Heard Mr.S.S.Swaminathan learned counsel for the Appellant. Mr.Ma.P.Thangavel learned counsel for the respondent.

4. According to the learned counsel for the Appellant, even though in the grounds of the appeal, they have challenged the Award both on negligence as well as quantum, the appellant is restricting the challenge only to the finding on negligence in this appeal.

5. According to him, the pleadings in the claim petition and the oral evidence let in by the respondent before the tribunal are contradictory. In the claim petition, the respondent has pleaded that the bus belonging to the appellant transport corporation came in the opposite direction and collided with the two wheeler, in which, the respondent was a rider whereas, in his oral evidence, he has stated that the bus, after overtaking the mini bus coming in the opposite direction, dashed against the motor cycle resulting in injuries sustained by the respondent.

6.Further, he would contend that even though FIR was registered against the driver of the bus and Charge sheet was also filed, but ultimately, in the judgment passed by the criminal Court, the driver of the bus was acquitted. The judgment of the criminal Court was also marked as Ex.R1 before the tribunal. According to him, the Tribunal did not consider the said judgment under the impugned award.

7. In the light of the above submissions, the learned counsel for the appellant contended that the respondent is also at fault and contributory negligence has to be attributed on the respondent also for the said accident.

8.Per contra, learned Counsel appearing for the respondent would submit that the FIR was registered only against the driver of the bus owned by the Appellant Transport Corporation. According to him, it is the consistent stand of the respondent that the bus coming from the opposite direction

collided with the motor cycle, in which, the respondent was riding, resulting in injuries sustained by the respondent. Further, he would contend that the driver of the Bus was never examined before the tribunal. According to him, the tribunal has rightly fastened the entire liability on the Appellant Transport Corporation for payment of compensation to the respondent.

9. This Court, after having considered the materials available on record and after examining the impugned award and after hearing the submissions of the respective counsels, observes the following:-

a) In the claim petition filed by the respondent, he has pleaded that the bus belonging to the Appellant Transport Corporation which came in the opposite direction collided with the motor cycle, in which, the respondent was a rider due to the rash and negligent driving by the driver of the Bus. FIR was also registered only against the driver of the bus and charge sheet was also filed against the driver of the Bus.

b) Even though the judgment was passed acquitting the driver of the Bus, it will not bind the Motor Accident Claims Tribunal. A Criminal offence will have to be proved beyond reasonable doubt, whereas, the Motor Accident Claim is decided based on the materials and evidence available on record and is based on preponderance of probabilities.

c) Admittedly, in the instant case, the respondent has sustained injuries as a result of an accident caused by a bus owned by the Appellant Transport Corporation. No contra evidence has been produced by the Appellant Transport Corporation before the Tribunal to establish that the respondent was also at fault. Further the driver of the bus belonging to the Appellant Transport Corporation Court was also not examined as a witness before the Tribunal, whereas the respondent was examined as a witness before the tribunal. Only after considering all these factors, the Tribunal has fastened the entire liability on the Appellant Transport Corporation under the impugned award.

d) Since the Appellant Transport Corporation has not seriously disputed the quantum of compensation awarded by the Tribunal under the impugned award, there is no necessity for this Court to discuss whether the quantum of compensation assessed by the Tribunal is correct or not and the assessment of compensation by the Tribunal is hereby confirmed.

10. In the light of the above observations, there is no merit in the instant appeal. Accordingly this appeal is dismissed. No costs. The appellant transport corporation is directed to deposit the amount awarded by the tribunal along with interest, if not already deposited, to the credit of MCOP within a period of four weeks from the date of receipt of a copy of this order and on such deposit being made, the respondent is permitted to withdraw the same on filing an appropriate application. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

ggi/msr

To

1.The Judge,
Fast Track Court, Motor Accident Claims Tribunal,
Namakkal.

2.The Record Clerk, VR Section,
High Court, Madras.(2 copies)

+lcc to Mr.S.S.Swaminathan, Advocate sr.no.70088
+lcc to Mr.Ma.P.Thangavel, Advocate sr.no.70472

C.M.A.No.3672 of 2010

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