

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.11.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.230 of 2015

S.M.Ravi

.. Appellant/Plaintiff

Vs.

- 1.Panneer Selvam
- 2.New India Assurance Company Ltd.,
Parimalam Complex 11-E.V.N. Road,
Erode Town.
- 3.Chella Muthu
- 4.The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Kumbakonam, Thanjavur District. ... Respondents/Respondents

(R1 & R3 were set exparte before the Tribunal)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 30.09.2008 made in M.C.O.P.No.239 of 2004, on the file of II Additional Sub Court, (Motor Accidents Claims Tribunal), Gobichettipalayam.

For Appellant : Mr.Ma.P.Thangavel

For R4 : Mr.D.Venkatachalam

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award and decree dated 30.09.2008 made in M.C.O.P.No.239 of 2004, on the file of II Additional Sub Court, (Motor Accidents Claims Tribunal), Gobichettipalayam.

2.The appellant is the claimant in M.C.O.P.No.239 of 2004, on the file of II Additional Sub Court, (Motor Accidents Claims Tribunal), Gobichettipalayam. He filed the said claim petition,

claiming a sum of Rs.5,00,000/- as compensation for the injuries suffered by him in the accident that took place on 12.06.2003.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident took place only due to the rash and negligent driving by the appellant as well as the 3rd respondent and directed the 4th respondent-Transport Corporation to pay a sum of Rs.3,07,182/- (50% of Rs.3,07,182/-) as compensation to the appellant.

4.Challenging the award of the Tribunal fixing 50% of contributory negligence on the appellant and also seeking enhancement of the compensation awarded, the appellant has come out with this appeal.

5.The learned counsel appearing for the appellant contended that the negligence on the part of the appellant cannot be fixed based on the FIR lodged against him. At the time of accident, the appellant was unconscious. Taking advantage of the same, the driver of the bus lodged complaint against the appellant. The driver of the bus alone is responsible for the accident and the 4th respondent is liable to pay the entire compensation. In any event, the policy taken is package policy and a sum of Rs.25/- was paid apart from Personal Accident cover, to unnamed passengers and W.C employees. Hence, petition under Section 166 of the Motor Vehicles Act is maintainable and 2nd respondent-Insurance Company is liable to pay the compensation. The Tribunal after holding that the respondents are liable to pay compensation, erred in directing the 4th respondent alone to pay 50% of the compensation awarded and erroneously exonerated the Insurance Company. The amounts awarded by the Tribunal are too meager and the same has to be enhanced, as stated in the grounds of appeal.

6.Per contra, the learned counsel appearing for the 4th respondent-Transport Corporation contended that the accident occurred only due to the rash and negligent driving by the appellant and appellant alone is responsible for the accident. The Tribunal erred in fixing 50% of contributory negligence on the driver of the bus without properly appreciating the First Information Report which is registered against the appellant. The amounts awarded by the Tribunal under various heads are excessive and prayed for fixing the entire negligence on the part of the appellant and dismiss the appeal.

7.Heard the learned counsel for the appellant as well as the 4th respondent and perused the materials on record.

8.The learned counsel for the appellant contended that the driver of the bus alone is responsible for the accident and complaint was lodged against the appellant as he was unconscious after the accident. From the materials on record, it is seen that the appellant has not objected to the First Information Report being registered against him. Further, he has not examined any independent eye-witness to prove that accident occurred only due to the rash and negligent driving by the driver of the bus and not due to the negligence of the appellant. The Tribunal has not fixed the liability solely on the basis of the First Information Report. The Tribunal has considered the fact that the two vehicles were involved in the accident and considering the report of the Motor Vehicle Inspector with regard to damages caused to both the vehicles coupled with FIR, has held that both the appellant and driver of the bus belonging to the 4th respondent are equally responsible for the accident. There is no error in the said finding warranting interference by this Court.

9.The next contention of the learned counsel for the appellant is that extra premium was paid to W.C employees and therefore the 2nd respondent-Insurance Company is also liable to pay compensation to the appellant, is without merits. The Tribunal has held that the appellant is equally negligent for the accident and has fixed 50% contributory negligence on the part of the appellant.

10.As far as the quantum of compensation is concerned, the learned counsel for the appellant contended that the Tribunal erred in fixing meager amount of Rs.3,000/- per month, while the appellant as a driver was earning Rs.6,000/- per month. The appellant has not let in any evidence to substantiate the fact with regard to the income. In such circumstances, Rs.3,000/- fixed by the Tribunal as notional income for the accident that occurred in the year 2003 is reasonable one. The appellant has not let in any evidence to show that he suffered functional disability and is unable to do work as driver as he was doing earlier and that he had suffered loss of earning capacity. In such circumstances, the amounts awarded by the Tribunal for the injuries suffered by the appellant is just compensation. Similarly, the amounts awarded under different heads are not meager. Hence, there is no perversity warranting interference by this Court.

11.In the result, this Civil Miscellaneous Appeal is dismissed and the sum of Rs.1,53,591/- towards 50% awarded by

the Tribunal to the appellant as compensation is confirmed. The 4th respondent-Transport Corporation is directed to deposit the award amount with interest, less the amount already deposited, if any, within a period of twelve weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.239 of 2004. On such deposit, the appellant/claimant is permitted to withdraw the award amount with accrued interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. No costs.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

gsa

To

- 1.The II Additional Subordinate Judge,
(Motor Accidents Claims Tribunal), Gobichettipalayam.
 - 2.The Section Officer, VR Section, High Court, Madras.
- +1cc to M/s.MA.P.Thangavel, Advocate SR.No.80819
+1cc to Mr.D.Venkatachalam, Advocate SR.No.81066

C.M.A.No.230 of 2015

AK (CO)

GMV (10/01/2019)

WEB COPY