

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.01.2018

CORAM

THE HONOURABLE MR. JUSTICE S.BASKARAN

CIVIL MISCELLANEOUS APPEAL NO.1477 OF 2017

Rajathi

.. Appellant/Petitioner

...VS...

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

... Respondent/Respondent

Prayer:-

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the awarded and Decreetal order dated 24.11.2006 made in MCOP.No.145 of 2005 on the file of the Motor Accident Claims Tribunal/Additional District Judge, Fast Track Court No.I, Cuddalore at Chidambaram.

For Appellant : Mr.S.Udhayakumar

For Respondent : Mr.K.J.Sivakumar

JUDGMENT

This civil miscellaneous appeal has been preferred by the petitioner/claimant against the order of dismissal passed in MCOP.No.145 of 2005 dated 24.11.2006 on the file of the Motor Accident Claims Tribunal/Additional District Judge, Fast Track Court No.I, Cuddalore at Chidambaram.

2. For sake of convenience, the parties herein after be referred to in this judgment as arrayed before the Tribunal.

3. According to the petitioner, on 16.05.2004, at about 17.30 hours, while she was going in a Tyre Bullock-Cart, near Periya Pattu, the respondent corporation bus bearing Registration No.TN-32-N-1337, driven by its driver at high speed in a rash and negligent manner dashed against the bullock-cart, resulting in contusion on her forehead and abrasions all over the body. The petitioner took treatment in Government Hospital,

Cuddalore as in patient and thereafter continuously taking treatment in private hospital. The petitioner was working as agriculture labour and earning a sum of Rs.4,000/- p.m.. The petitioner states that due to the injuries suffered by her, she is not able to do agricultural labour work and she has suffered loss of income. At the time of accident she was aged about 47 years. Hence, the petitioner seeks compensation of Rs.50,000/-.

4. On the other hand, opposing the petition, the respondent filed a counter stating that the accident did not occur due to the fault of their driver. On 16.05.2004, the driver of the respondent corporation bus was going at slow speed, following the traffic rules. At that time, there was light drizzle, the bullock-cart which was going ahead of the bus, suddenly crossed from the left side of the road to right side without any signal and on seeing that the driver of the respondent corporation bus applied the brake and inspite of his best efforts, due to the negligence of the driver of the bullock-cart the accident occurred. Thus, the respondent contends that the accident occurred only due to the negligent driving of the bullock-cart driver and as such the respondent is not liable to pay any compensation. The respondent also disputed the claim of the petitioner regarding her age avocation and income. Thus, the respondent sought for dismissal of the petition.

5. Before the Tribunal, the petitioner examined herself as P.W.1 and medical expert as P.W.2 and produced Ex.P1 to Ex.P4 to substantiate her claim. On the side of the respondent, no witness was examined and no documents was produced.

6. The Tribunal, after considering the materials available on record, found that the accident occurred only due to the rash and negligent driving of the driver of the respondent corporation bus. However, the Tribunal disbelieved the claim of the petitioner regarding the injuries suffered by her and dismissed the petitioner in toto.

7. Aggrieved over the said order of dismissal, the petitioner/claimant has come forward with this present appeal stating that after the Tribunal concluded that the accident occurred only due to the negligence of the respondent corporation driver dismissal of the claim petition is unwarranted. Further, the evidence of P.W.2 was not considered by the Tribunal properly and the nature of injuries being grievous, dismissal of the petition by the Tribunal and the reasons stated for the same are not proper. Hence, the petitioner seeks to allow the appeal and awarded compensation for the injuries suffered by her.

8. The fact that the respondent corporation bus caused the

accident on 16.05.2004 is not disputed. The contention of the respondent corporation is that the bullock-cart in which the petitioner was travelling suddenly tried to cross the road and in spite of the best efforts of the driver, the bus dashed against the bullock-cart resulting in the accident. Ex.P1 First Information report is filed against the driver of the respondent corporation bus only. The petitioner, who suffered injuries in the accident has categorically stated that the accident occurred only due to the negligence of the respondent bus driver. There is no contra evidence let in by the respondent to dispute and disbelieve the claim of the petitioner in that regard. In such circumstances, relying upon the evidence of P.W.1 and Ex.P1 First Information Report, it is clear that the accident occurred only due to the negligence of the respondent bus driver. Hence, the finding of the Tribunal in that regard is just and proper.

9. The petitioner states that she suffered several injuries all over the body and took treatment in Government Hospital, Cuddalore as in patient. The petitioner produced a copy of the accident register as Ex.P2. The case sheet was marked as Ex.P4 and discharge summary given to her as Ex.P3. It is evidenced from the said documents that the petitioner was treated from 16.05.2004 and 25.05.2004 as in patient and given treatment at Government Hospital, Cuddalore for hip pain and headache only. There is nothing on record to show that any X-ray was taken for the petitioner during that period. It is evidence from the deposition of P.W.2, Doctor that no X-ray was taken and nothing is mentioned in Ex.P4 case sheet about the petitioner suffering any contusion. As such on the basis of available records, it is clear that the petitioner has suffered only simple injuries. Further, there is nothing on record to show that the petitioner suffered any permanent disability or grievous injury. Hence, this Court finds that the petitioner even though underwent treatment as inpatient in Government Hospital, Cuddalore for a period of 5 days as she has not established before the Court that she has suffered any grievous injuries or permanent disability, on the basis of available on record, it is concluded that the petitioner suffered only simple injuries in the accident caused due to the negligence of the respondent bus driver.

10. As the nature of injuries suffered by the petitioner is only simple and the petitioner having not produced any acceptable evidence to prove her nature of avocation and income, this Court is of the view that the ends of justice will be met if she is given consolidated sum of Rs.15,000/- as compensation for simple injuries suffered by her. In view of the said conclusion, the finding of the Tribunal that the petitioner cannot be granted any compensation is un sustainable and the

same is liable to be set aside.

11. In the result, this Civil Miscellaneous Appeal is allowed. The order of dismissal passed by the learned Additional District Judge, Fast Track Court No.I, Cuddalore at Chidambaram dated 24.11.2005 in MCOP.No.145 of 2005 is set aside. The petitioner is awarded a sum of Rs.15,000/- as compensation in toto with interest at the rate of 7.5% from the date of petition till the date of deposit. The respondent is directed to deposit the award amount within a period of six weeks from the date of receipt of a copy of this order. In the event of such deposit to the credit of M.C.O.P.No.145 of 2005 on the file of the Motor Accident Claim Tribunal/Additional District Judge, Fast Track Court No.I, Cuddalore, the petitioner is permitted to withdraw the entire amount by filing necessary application before the Tribunal.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal
Additional District Judge,
Fast Track Court No.I,
Chidambaram
2. Section Officer,
VR Section, High Court, Madras

+1cc to Mr.K.J.Sivakumar, Advocate, S.R.No.6045

+1cc to Mr.S.Udhayakumar, Advocate, S.R.No.6162

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C.M.A.No.1477 of 2017

MR(CO)
CS/26/02/18