

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 03.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN
Civil Miscellaneous Appeal No.1987 of 2018
and
CMP.No.15460 of 2018

The Managing Director
Tamil Nadu State Transport Corporation
Kumbakonam Limited,
Having office at Railway Station Road,
Kumbakonam Town and District. .. Appellant

Vs.

1.Ambedhkar
2.Sekar
3.The Branch Manager,
Tamil Nadu State Transport Corporation Limited,
Nagapattinam Branch,
Having office at Main Road,
Nagapattinam Town and District. ... Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the decree and judgment dated 25.11.2016 passed in M.C.O.P.No.6 of 2013 by the Motor Accidents Claims Tribunal (Subordinate Judge), Karaikal.

For Appellant : Mr.D.Venkatachalam

JUDGMENT

Impugning the decree and judgment dated 25.11.2016 passed in M.C.O.P.No.6 of 2013 by the Motor Accidents Claims Tribunal (Subordinate Judge), Karaikal, the present appeal is filed.

2. The facts leading to the filing of this appeal are narrated infra. The first respondent herein filed the claim petition before the Tribunal alleging that on 23.5.2011 at 5.00 A.M., the first respondent was driving a Maruti car bearing registration No.PY-01 AU 5376 on Thanjavur road at Koradacherry and while nearing Roseli water plant, a heavy passenger's stage carriage bus bearing

registration No.TN-49 N 1877 driven by the second respondent in a rash and negligent manner hit against the car. As a result of which, the first respondent sustained grievous injuries. Regarding the accident, a criminal case in Crime No.190 of 2011 was registered against the first respondent. Stating that the accident occurred due to the rash and negligent driving of the driver of the bus belongs to the appellant, the first respondent filed claim petition claiming compensation of Rs.10,00,000/-.

3. The appellant herein denied the allegations in the claim petition and filed a detailed counter contending that the bus bearing registration No.TN-49 N 1877 was driven by the second respondent slowly and carefully and when the bus reached near Roseli water plant at Koradacherry, the first respondent was driving his Maruti car bearing registration No.PY-01 AU 5376 in a rash and negligent manner without following traffic rules came from the opposite direction in a zig zag manner in a sleeping mood and he himself dashed against the bus and invented the accident. Therefore, the second respondent lodged the complaint to the Koradacherry Police Station. There was no fault on the part of the second respondent. The second respondent was not driving rash and negligent in his driving. Therefore, the appellant was not liable to pay the compensation to the first respondent.

4. The learned Tribunal, by decree and judgment dated 25.11.2016 passed in M.C.O.P.No.6 of 2013, held that the accident occurred due to rash and negligent act of the second respondent only. As far as quantum of compensation is concerned, the Tribunal awarded Rs.2,55,000/- payable with interest at the rate of 7.5% per annum from the date of petition till the date of deposit.

5. Assailing the same, the present appeal is filed by the appellant Transport Corporation.

6. I have heard Mr.D.Venkatachalam, learned counsel for the appellant and perused the entire materials available on records.

7. The learned counsel for the appellant contended that the Tribunal ought not to have considered the evidence of PW1 whose evidence has not been corroborated by any independence witness. The Tribunal has failed to note that the FIR has been registered against the first respondent as he drove the car in a rash and negligent manner and dashed against the bus. He would submit that the Tribunal has failed to consider the evidence of RW1 driver who categorically stated that the accident occurred

due to the rash and negligent act of the first respondent. The Tribunal should have fixed contributory negligence against the first respondent based on the evidence of RW1 which corroborated by Ex.P1-FIR. The learned counsel further submitted that the Tribunal ought not to have taken the permanent disability of the first respondent as 43% and also it ought to have awarded Rs.36,000/- on the head of loss of income during treatment period.

8. The case of the first respondent is that on 23.5.2011 at about 5.00 A.M., he was driving Maruti car bearing registration No.PY-01 AU 5376 on Thanjavur Road at Koradacherry and while he was nearing Roseli Water Plant, the bus bearing registration No.TN-49 N 1877 belongs to the appellant driven by its driver in a rash and negligent manner dashed against the Maruti car and caused the accident.

9. The first respondent examined himself as P.W.1 and marked Exs.P1 to P8 were marked. The second respondent was examined as R.W.1.

10. The appellant contended that the accident occurred only due to rash and negligent act of the first respondent. Ex.P1-FIR was registered based on the information given by the driver of the bus. Though in his evidence, R.W.1 deposed that the accident occurred due to the negligence of the first respondent, nothing has been produced to prove the same. Mere lodging of complaint by the driver of the bus, it cannot be said that the driver of the bus has no fault. As rightly observed by the Tribunal that based on the FIR the Court could not come to the conclusion that the accident took place due to the first respondent. The evidence of R.W.1 is without pleadings. Therefore, the Tribunal was right in holding that the accident took place due to rash and negligent act of the second respondent only.

11. In the accident, the first respondent sustained grievous injuries and he was admitted in Thiruvarur Government General Hospital where he was taken treatment for two days and thereafter, he was admitted at Parvathy Hospital for Futuristic Ortho and Neuro at Chrompet, Chennai and had taken treatment from 25.5.2011 to 8.6.2011. The first respondent was diagnosed Right SOF fracture, fracture of left ribs 1, 3 to 9 and bilateral hemothorax DM - left IDC done, IM nail right femur with wound debridgement. Again the first respondent was taken treatment on 18.6.2011 and 19.6.2011. The first respondent also produced Ex.P7 to show that he had taken treatment at Miot Hospital, Chennai from 21.3.2012 to 30.3.2012.

12. P.W.2-Doctor examined the first respondent on 17.11.2013 and assessed the disability as 58% i.e., 25% for fractures of ribs on the left side and 33% on the right femur. However, the Tribunal has taken the disability as 43% i.e., 20% for non-union of ribs and 23% for fracture of right femur.

13. Taking the disability as 43%, the Tribunal awarded Rs.1,29,000/- towards disability by calculating Rs.3,000/- per percentage. The Tribunal also awarded Rs.15,000/- for pain and suffering. Considering the nature of injuries and the period of treatment undergone by the first respondent, Rs.1,29,000/- awarded by the Tribunal for disability and Rs.15,000/- awarded by the Tribunal for pain and suffering are reasonable and the same are maintained.

14. The Tribunal awarded Rs.5,000/- for extra-nourishment; Rs.10,000/- for transport charges. Since the said amounts are reasonable, the same are maintained.

15. The Tribunal awarded Rs.36,000/- towards attender charges. Considering the period of treatment and also the fact that the first respondent would have been taken care of by the attender during the period of treatment, a sum of Rs.36,000/- awarded by the Tribunal is maintained.

16. The medical records produced by the first respondent would reveal that he had taken treatment for almost ten months. Therefore, there was loss of income during the said period. In the present case, there was no proof to show the monthly earning of the first respondent. In the absence of proof, the Tribunal has fixed the monthly income of the first respondent at Rs.5,000/- and awarded Rs.60,000/- for loss of income for a period of one year. Since the first respondent has taken treatment almost one year, Rs.60,000/- awarded by the Tribunal for loss of income is reasonable and the same is maintained. Thus, the total compensation of Rs.2,55,000/- awarded by the Tribunal is just and reasonable and the same is confirmed. No valid grounds have been made out to interfere with the award of the Tribunal and therefore, the present appeal is liable to be dismissed.

17. In the result, the Civil Miscellaneous Appeal is dismissed. The award dated 25.11.2016 passed in M.C.O.P.No.6 of 2013 on the file of the Motor Accident

Claims Tribunal (Subordinate Judge) Karaikal is confirmed.
No costs. Consequently, connected miscellaneous petition
is closed.

Sd/-
Assistant Registrar (CS)

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Sub Assistant Registrar

vs
To

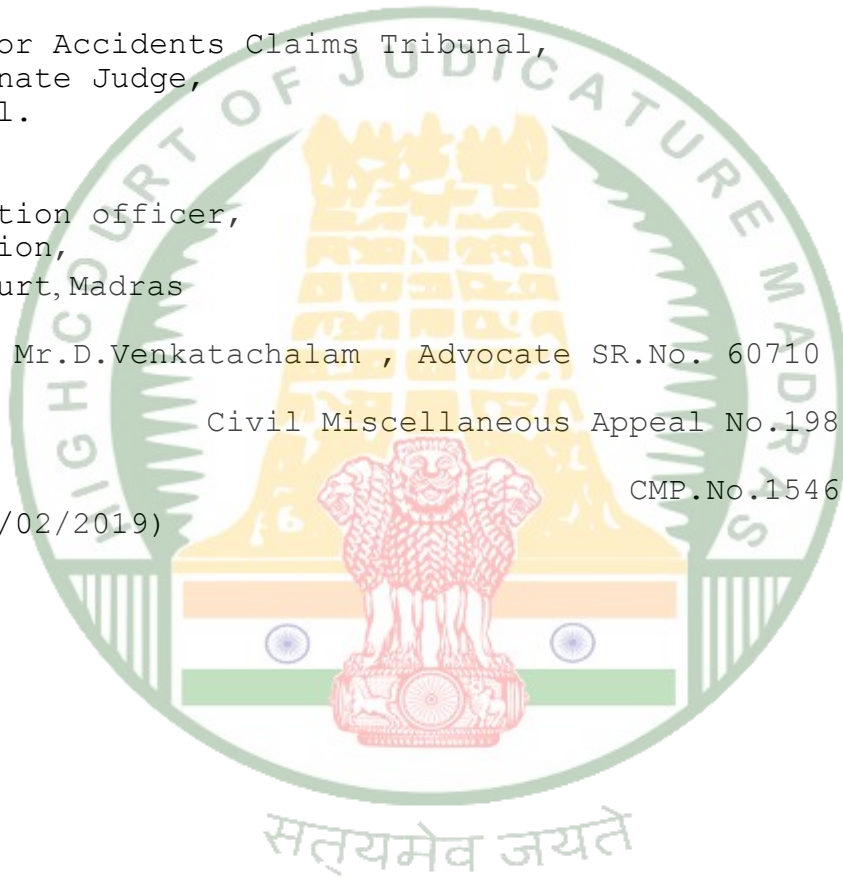
The Motor Accidents Claims Tribunal,
Subordinate Judge,
Karaikal.

Copy to
The section officer,
VR Section,
High court, Madras

+1cc to Mr.D.Venkatachalam , Advocate SR.No. 60710

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A.SK(15/02/2019)



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