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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No. 23 of 2014 and
M.P.Nos. 1 of 2013 and 1 of 2014

The Managing Director
Tamil Nadu State Transport
Corporation, Periyamilaguparai
Trichy.

... Appellant /Respondent

Vs.

Uma

... Respondent/Petitioner

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, against the Judgment and Decree passed by the learned Additional District Judge, Ariyalur in M.C.O.P.No.263 of 2010, dated 27.08.2012.

For Appellant : Mr.D. Venkatachalam

For Respondent : Mr.S. Kamadevan

J U D G M E N T

The Appellant/Tamilnadu State Transport Corporation has filed this appeal against the Judgment and Decree passed by the learned Additional District Judge, Ariyalur, in M.C.O.P.No.263 of 2010, dated 27.08.2012.

2. For the sake of convenience, the parties are referred to as per their litigative status before the Tribunal.

3. The case of the petitioner is that on 17.01.2009 at about 09.45 hours as the petitioner was travelling in the respondent bus bearing Registration No.TN-45-N-2729 from Trichy Tolgate to Vetrivikas School bus stop, Mullur and as the petitioner was stepping down from the bus, at that time the driver of the bus even before the petitioner got down, without any whistle given by the conductor suddenly moved the vehicle resulting in the petitioner falling down from the bus and the



bus, ran over the right leg of the petitioner resulting in crush injury. The deceased was aged 36 years and was carrying on business on her own earning Rs.25,000/- per month. The accident occurred only due to the negligence of the respondent bus driver due to which the petitioner suffered injury. Due to the injuries suffered the petitioner is unable to carry on his regular work and suffered loss of income. Thus, the petitioner sought for a sum of Rs.15 lakh as compensation from the respondent.

4. On the other hand, opposing the claim of the petitioner by filing the counter, the respondent/Tamilnadu State Transport Corporation contends that the accident does not occur in the manner as alleged by the petitioner. On 18.09.2009, the respondent's bus was proceeding in its regular trip from Jayankondam to Thuraiyur and at about 20.00 hours, while nearing Poovalur, a lorry which was going ahead of the bus, suddenly turned to in right side without any signal and on seeing that the respondent bus driver sounded horn and also turned the bus to his right side to avoid dashing the said lorry. In that process, the bus was pulled towards the left side and capsized slightly in the mud pit caused due to heavy rain. There is no negligence on the part of the driver. The claim of the petitioner is baseless and the respondent is not liable to pay any compensation. Hence, the respondent sought for dismissal of the petition.

5. Before the Tribunal, the petitioner examined herself as PW1 and the Medical Expert as PW2, produced documents Ex.P1 to Ex.P10 to prove her claim. On the side of the respondent, RW1 was examined but no document was produced.

6. The tribunal on the basis of the materials available on record, found that negligence on the part of the respondent bus driver alone caused the accident and passed an award for a sum of Rs.6,00,000/- as compensation to the petitioner. Aggrieved over the said finding of the Tribunal, the respondent/Tamilnadu State Transport Corporation has come forward with the present appeal.

7. The learned counsel for the respondent/Tamilnadu State Transport Corporation contends that the tribunal ought not to have fixed negligence of the respondent bus driver as the cause for the accident merely on the basis of PW1's oral evidence and Ex.P1-First Information Report registered by the police. The evidence of RW1, who was driving the respondent bus should have been believed by the Tribunal. The amount award by the Tribunal is highly exorbitant. Thus, the respondent sought for dismissal of the claim petition by allowing the present appeal.



8. Per contra, the learned counsel appearing for the petitioner/claimant contends that the tribunal correctly analysed the evidence on record and passed an award which is just and fair compensation and no ground is made out to interfere with the award passed by the Tribunal. Hence, the petitioner/claimant sought for dismissal of the appeal.

9. Heard both sides and perused the materials available on record.

10. The petitioner claims that the accident occurred only due to the negligence of the respondent bus driver. The petitioner, who deposed as PW1 clearly stated that while she was getting down from the bus near Vetri Vigas School bus stop, Mullur, the driver of the bus suddenly moved the bus resulting in the petitioner falling down from the bus which resulted in the injury. The police have registered Ex.P1 First Information Report against the driver of the Respondent vehicle only. On the other hand, RW1 driver of the bus has denied the same and stated that there was no negligence on his part as alleged by the petitioner.

11. However, it is clear from the available records that the respondent has taken different stand about the manner of accident in their counter and the oral evidence. The driver of the bus who deposed as RW1 stated that while the bus was proceeding at slow speed the deceased got down and suffered injuries. Immediately, RW1 stopped the bus. However, during the cross examination of the petitioner who deposed as PW1, it was suggested by the respondent that to avoid dashing against the lorry, the driver of the bus turned left and in the process the bus fell into the ditch resulting in the accident. It is pointed that there is no suggestion made to PW1 about the deceased getting down from the moving bus. In the counter also it is not stated so. In the suggestion made to PW1 during the cross examination only it is stated that the bus capsized and fell into the ditch, as the driver attempted to avoid dashing against the lorry, but the same was denied by the petitioner. Thus, it is clear that the respondent has not taken any firm stand about the nature of the occurrence. Assuming that the accident does not occur as alleged by the petitioner, the Police would not have registered the case against the respondent bus driver. As such considering the clear cut evidence of PW1 and the contents of the Ex.P1 FIR, it is clear that the accident occurred only due to the negligence of the respondent bus driver.



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12. The petitioner while deposing as PW1 clearly stated about the injuries suffered by her in the accident. The doctor who deposed as PW2 assessed the disability at 65% and issued disability certificate Ex.P9. The doctor also stated that the petitioner underwent surgery in the right leg and the same has been amputated. As such, it is clear that the petitioner has suffered amputation of the right leg upto the knee and she is permanently disabled. In such circumstances, the Tribunal is justified in fixing the disability at 65% and awarding a sum of Rs.2000/- per percentage of disability. On the basis of the medical bills produced by the petitioner, as per Exs.P6 & P7 series the tribunal awarded a sum of Rs.3,01,000/- towards medical expenses and the same needs no interference. Taking into account the fact that the period of treatment and the nature of injury, the tribunal is justified in awarding the amount of Rs.1,09,000/- towards pain and suffering and a sum of Rs.30,000/- towards transport expenses and Rs.30,000/- for extra nourishment. In view of the above stated reasons, the quantum of award passed by the tribunal is proper and based on proper appreciation of available evidence. Thus, the quantum of award arrived at by the tribunal is justifiable and the same needs no interference.

13. In the light of the above discussion, it is clear that the negligence of the respondent/Tamilnadu State Transport Corporation bus driver alone caused the accident and quantum awarded by the tribunal is just and proper. No ground is made out by the appellant/Tamilnadu State Transport Corporation to interfere with the award passed by the tribunal and as such the appeal has to fail.

14. In the result, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar



The Additional District Judge,
Ariyalur.

+lcc to Mr.D.Venkatachalam, Advocate Sr.21817
+lcc to Mr.S.Kamadevan, Advocate Sr.21725

C.M.A.No. 23 of 2014

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