

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.764 of 2018
and
C.M.P.No.6478 of 2018

The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Vedhachalam Maligai,
No.1, Sheikpet Nadu Street,
Kanchipuram. ..Appellant/Respondent

Versus

V.Balaji ..Respondent/Petitioner

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 16.03.2011 made in M.C.O.P.No.4361 of 2004 on the file of the Motor Accident Claims Tribunal, III Small Causes Court, Chennai.

For Appellant : Mr.K.J.Sivakumar

J U D G M E N T

The appellant/Transport Corporation has filed this appeal against the judgment and decree 16.03.2011 made in M.C.O.P.No.4361 of 2004 on the file of the Motor Accident Claims Tribunal, III Small Causes Court, Chennai.

2. By consent of the learned counsel for the appellant/Transport Corporation, this appeal is taken up for final disposal at the admission stage itself.

3. For the sake of convenience, the parties are referred to hereunder according to their litigative status before the Tribunal.

4. The case of the petitioners is that on 02.07.2004 at about 5.25 p.m., while the petitioner was driving a two wheeler bearing Registration No.TN-21-F-9637 and going near Kavalan Gate, Kanchipuram, the respondent/Transport Corporation bus bearing Registration No.TN-74-N-0602 proceeding from Kanchipuram bus stop to Vandhavasi came at high speed, dashed against the petitioner causing him multiple grievous injuries. The accident

occurred due to rash and negligent driving by the respondent bus driver only. At that time, the petitioner was aged 25 years and by working as a labour in construction work was earning Rs.5,000/- per month. Due to the injury suffered, he is unable to attend to his work, resulting in loss of income to him. Thus, the petitioner seeks a sum of Rs.1,00,000/- as compensation from the respondents.

5. On the other hand, opposing the claim of the petitioner, by filing counter, the respondent/Transport Corporation contends that the driver of their bus was not responsible for the accident. On the other hand, while the bus was proceeding at normal speed on the left side of the road, the rider of the two wheeler bearing Registration No.TN-21-E-9637 suddenly crossed the road without noticing the oncoming traffic and in spite of the bus driver applying the break and stopping the bus, the rider of the two wheeler lost his control, dashed against the bus, resulting in the accident. The police also registered a case against the rider of the two wheeler only. The accident occurred due to negligence of the two wheeler rider only. The respondent/Transport Corporation is not liable to pay compensation. The claim of the petitioner is exorbitant. Thus, the respondent/Transport Corporation sought for dismissal of the petition.

6. Before the Tribunal, the petitioner examined himself as P.W.1 and produced documents Exs.P.1 and P.2 to prove his claim. On the side of the respondent, the driver of the bus deposed as R.W.1, but no document is produced. The Tribunal, on the basis of available evidence on record, found negligence of the respondent bus driver alone caused the accident and passed an award for a sum of Rs.25,000/- payable by the respondent to the petitioner. Being aggrieved over the said conclusion of the Tribunal, the respondent/Transport Corporation has come forward with the present appeal.

7. Heard the learned counsel for the appellant/respondent/Transport Corporation.

8. The learned counsel for the respondent/Transport Corporation contends that the Tribunal failed to appreciate the fact the police registered F.I.R against the rider of the two wheeler only. As the respondent bus is not responsible for the accident, there is no need to pay any compensation. Hence, the respondent/Transport Corporation sought to set aside the award passed by the Tribunal by entertaining the appeal.

9. Per contra, the learned counsel for the petitioner/claimant contends that the Tribunal has correctly fixed the negligence of the respondent bus driver as the cause for the accident but awarded a very low amount as compensation. Even assuming there was any negligence on the part of the petitioner, which resulted in the accident he is entitled for a sum of Rs.25,000/- as no fault liability and the award passed by the Tribunal is only Rs.25,000/-, the learned counsel for the

petitioner/claimant sought for dismissal of the appeal.

10. The Tribunal, after considering the available evidence on record, found that due to respondent bus driver negligence alone the accident occurred and passed an award for a sum of Rs.25,000/-. Admittedly, the police registered Ex.P.1 - F.I.R implicating the petitioner as an accused, however, no final report is produced before the Tribunal. The petitioner who deposed as P.W.1 stated that only due to negligence of the respondent/Transport Corporation bus driver the accident occurred. On the other hand, the driver of the respondent bus deposed as R.W.1 alleging that the negligence of the petitioner alone resulted in the accident. There is no other independent evidence examined by the petitioner. In such circumstances, it is contended by the respondent/Transport Corporation that the Tribunal is not justified in fixing the negligence on the respondent bus driver. However, considering the fact that the accident occurred while the two vehicles were moving, it is apparent that the respondent bus driver ought to have been careful in driving the vehicle which is the bigger vehicle and as such the conclusion of the Tribunal that the negligence of the respondent bus alone was the cause for the accident is to be upheld as just and proper.

11. The petitioner stated that he had suffered injury in his head and he underwent treatment in Government Hospital, Kanchipuram from 02.07.2004 to 08.07.2004 and produced Discharge summary as Ex.P.2. However, the petitioner has not examined any Doctor or produced any disability certificate to show that he suffered any physical disability. There is no proof of the petitioner suffering from any partial or permanent disability. As such, keeping in mind, the nature of injury suffered by the petitioner was only simple and the fact that he was aged 23 years and working as a labourer in construction work, the Tribunal is justified in awarding total sum of Rs.25,000/- as compensation to the petitioner. The same needs no interference. The respondent/Transport Corporation has not made out any acceptable ground to set aside the award passed by the Tribunal. Thus, this Court is not inclined to entertain the appeal and the same has to fail. The point is answered accordingly. The Civil Miscellaneous Appeal is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar(CS VIII)

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Sub Assistant Registrar

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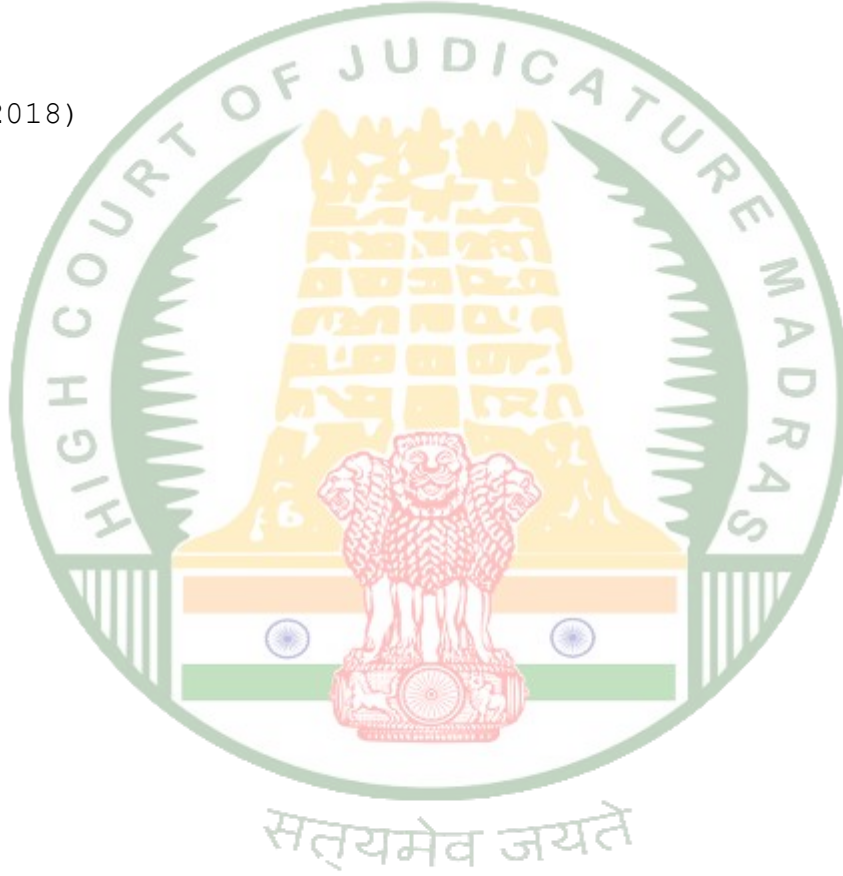
1. The III Small Causes Court,
Chennai.

2.The Section Officer,
V.R.Section, High Court, Madras.

+1cc to Mr.K.J.Sivakumar, Advocate SR.No.28021

C.M.A.No.764 of 2018

RK(CO)
GN(16/05/2018)



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