

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.08.2018

CORAM:

THE HONOURABLE MS.JUSTICE ABDUL QUDDHOSE

C.M.A.NO.1916 of 2008

P. Rajendiran

....Appellant

Vs

The Managing Director
Tamil Nadu State Government
Transport Corporation Ltd.,
Division II (PATC),
Vellore

...Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree passed on 17.08.2007 made in MCOP.No.337 of 2000 on the file of the Motor Accident Claims Tribunal (Addl. District Judge-FTC - II) Vellore.

For Appellants : Mr. C.Prabakaran

For Respondents : Mr.V. Ramesh

JUDGMENT

The instant appeal has been filed challenging the quantum of compensation awarded by the Motor Accidents Claims Tribunal (Addl. District Judge-FTC - II) Vellore in its judgment and decree dated 17.08.2007 in MCOP.No.337 of 2000.

2. The brief facts leading to the filing of the instant appeal are as follows;

(i) The appellant is the claimant in the claim petition filed before the Motor Accidents Claims Tribunal. The appellant was travelling in a bus belonging to the respondent/Transport Corporation on 18.9.1998 and the bus in which he was travelling collided with a lorry coming on the opposite side. Due to the said accident on 18.09.1998, the appellant sustained injuries and he made a claim for compensation before the Motor Accident Claims Tribunal for a sum of Rs.4,00,000/- against the respondent Transport Corporation.

(ii) The Tribunal by its judgment and decree dated 17.08.2007, directed the respondent Transport Corporation to pay

a sum of Rs.34,000/- together with interest at the rate of 7.5% per annum from the date of claim till the date of realisation and also directed the respondent Transport Corporation to pay a sum of Rs.1,541.50p as cost.

(iii) Aggrieved by the judgment and decree dated 17.08.2007 in MCOP.No.337 of 2000, the instant appeal has been filed seeking enhancement of compensation.

3. Heard, Mr. C. Prabakaran, learned counsel for the appellant and Mr.V. Ramesh , learned counsel for the respondent.

4. The learned counsel for the appellant submits that the compensation awarded by the tribunal is meagre and inadequate and not in accordance with the settled principles of law.

5. According to the learned counsel for the appellant, there is a clear finding given by the tribunal that only due to the rash and negligent driving by the driver of the bus belonging to the respondent Transport Corporation, the accident had happened resulting in injuries caused to the appellant.

6. Learned counsel for the appellant drew the attention of this Court to the findings of the tribunal found in paragraph 7 of the judgment and the relevant portion is extracted hereunder;

'In his evidence he has stated that on seeing the lorry coming at high speed from the opposite direction, he drove the bus to the left side of the mud road and inspite of it the lorry hit against the rear tin-plate of the bus approximately for a meter and the driver proceeded without stopping it. However in the counter statement the Corporation has stated that the lorry hit on the rear side wheel of the bus. Hence, I am not able to accept the version of R.W.1.'

7. According to the learned counsel for the appellant, the respondent Transport Corporation has not preferred any appeal against the judgment and decree and therefore, the findings of the tribunal have now become final. Therefore, the appellant has clearly established that only due to the rash and negligent driving by the driver of the respondent Transport Corporation, the accident had happened.

8. According to him, at this stage, the respondent Transport Corporation cannot object to the conclusive findings of the tribunal. Learned counsel then submitted that the compensation awarded by the tribunal under various heads like transportation cost, extra nourishment costs, medical expenses and loss of income and compensation for permanent disability is too low and not in accordance with the settled principles of law

as laid down by various judgments of this Court as well as by the Honourable Apex Court.

9. Per contra, learned counsel for the respondent Transport Corporation would submit that the FIR was lodged only against the lorry and not against the bus owned by the respondent Transport Corporation in which the claimant was travelling.

10. Learned counsel for the respondent Transport Corporation submits that out of benevolence, the respondent Transport Corporation has not preferred any appeal against the judgment and decree passed by the tribunal even though they are not liable to compensate the appellant/claimant. Further he would contend that the tribunal has also not given a categorical finding that only due to the rash and negligent driving of the driver of the vehicle belonging to the respondent transport Corporation, the accident had happened.

11. The second contention of the learned counsel for the respondent Transport Corporation was that even in the counter statement filed before the tribunal, the transport Corporation has categorically stated that only due to rash and negligent driving by the driver of the lorry which was coming on the opposite direction, the accident had happened. Further, FIR was also lodged only against the lorry and not against the bus owned by the respondent Transport Corporation.

12. The learned counsel for the respondent Transport Corporation would further contend that without impleading the owner of the lorry and the Insurance Company for the said lorry, the claim of the appellant against the bus owned by the respondent Corporation cannot be established.

13. Learned counsel for the appellant relied upon a decision of the Honourable Supreme Court in the case of Kamlesh and others Vs. Attar Singh and others reported in 2015 (2) TN MAC 577 (SC) and submitted that non lodging of an FIR will not absolve the liability of the respondent transport Corporation. According to him, having established that the respondent Transport Corporation is at fault, compensation will have to be paid only by the respondent transport corporation.

14. This Court, after having considered the materials available on record, and after hearing the submissions of the respective counsels, observes the following;

(a) FIR has been lodged only against the lorry and not against the bus owned by the respondent Transport Corporation.

(b) The respondent Transport Corporation even in its counter statement filed before the tribunal has categorically stated that it is only the lorry which is at fault and not the bus owned by the transport Corporation. They have also stated

in their counter statement, that the appellant will have to implead the owner of the lorry, its driver and the Insurance Company and without impleading them, the claim is not maintainable. Despite filing of counter statement to that effect, the appellant did not choose to implead them as parties to the dispute.

(c). The driver of the bus owned by the Transport Corporation was also examined as RW1. In his chief examination, he has categorically stated that he is not at fault and only the driver of the lorry is at fault. There is no categorical finding given by the tribunal that the driver of the bus owned by the respondent Transport Corporation is at fault. The tribunal, after recording the statement of RW1 who is the driver of the bus, belonging to the respondent Corporation, has without any basis, has given a finding that the tribunal does not accept the version of RW1. There must be some basis for having coming to that conclusion. No proper reasons have been given by the tribunal for coming to that conclusion.

(d) The judgment relied upon by the learned counsel for the appellant reported in 2015 (2) TN MAC 577 (SC) (cited supra) does not apply to the facts of the instant case. In that case, both the car and the tempo drivers were joint tort-feasors. In that case, there was evidence placed before the Court that both the car as well as the tempo were at fault. In the case on hand, the appellant has not been able to categorically establish that only the bus owned by the respondent transport Corporation is at fault and further having not impleaded the owner of the lorry, its driver and the insurance company, they cannot claim compensation only against the respondent Transport Corporation alone. There is also no categorical finding given under the judgment and decree that the respondent Transport Corporation is alone responsible for the accident.

15. In view of the above observations, this Court is of the considered view that there is no merit in the instant appeal. Accordingly, the appeal is dismissed. No costs.

16. The appellant is permitted to withdraw the amount deposited by the respondent Transport Corporation lying to the credit of MCOP.No.337 of 2000 with accrued interest thereon, after adjusting the amount already withdrawn, if any, by filing an appropriate application.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

msr

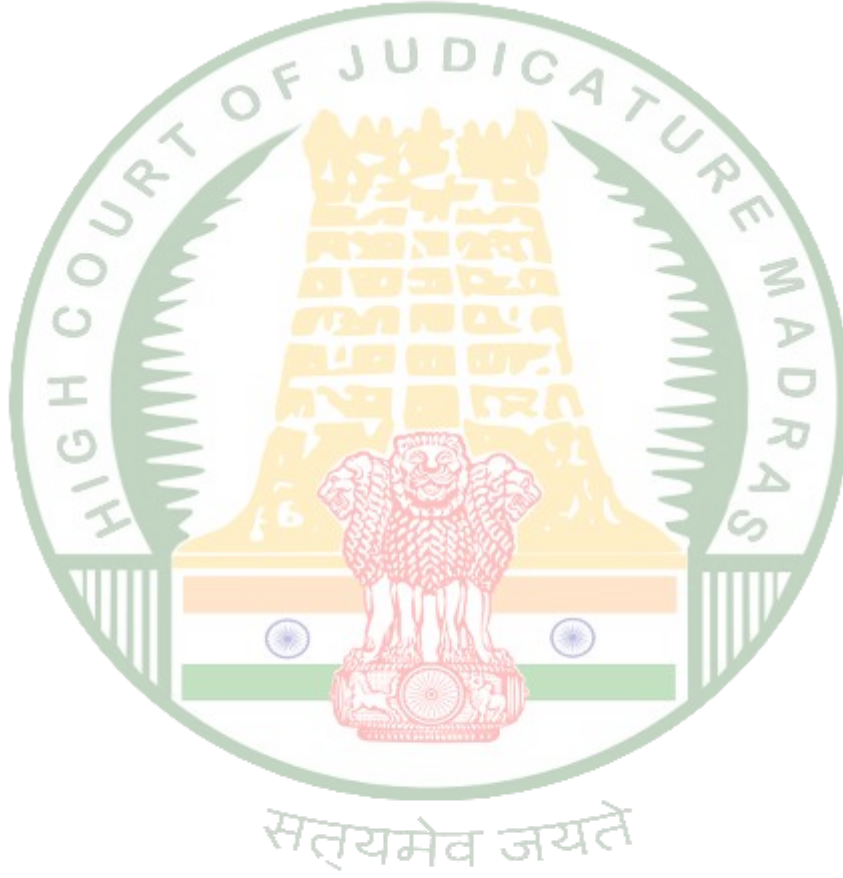
To

1. The Motor Accident Claims Tribunal
(Addl. District Judge-FTC - II) Vellore.

+1cc to Mr.C.Prabakaran, Advocate, S.R.No.56758

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