

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.08.2018

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.2125 of 2009

and

M.P.No.1 of 2009

The Managing Director,
Tamil Nadu State Transport Corporation (Coimbatore) Ltd.,
Erode

... Appellant/1st Respondent

..Vs..

1.P.V.Ramesh

2.Natarajan

...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Award made in MCOP No.35 of 2008 dated 20.01.2009 on the file of the Motor Vehicles Accident Claims Tribunal and Prl. Sub Judge, Erode.

For Appellant : Mr.K.J.Sivakumar

For Respondent 1 : Mr.J.Prithivi

J U D G M E N T

The instant appeal has been filed by the Transport Corporation challenging the Award dated 20.01.2009 passed by the Motor Accident Claims Tribunal and Prl. Sub Judge, Erode in its Judgment and Decree passed in M.C.O.P No.35 of 2008.

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

2. The first respondent while travelling as a passenger in the bus bearing registration No. TN33-N-1722 on 14.09.2007 at about 1.30 a.m owned by the appellant/corporation and driven by the second respondent/driver, the bus met with an accident causing injury to the first respondent as well as other passengers in the same bus. The first respondent made a claim before the Motor Accident Claims Tribunal in MCOP No.35 of 2008, seeking recovery of compensation of Rs.3,00,000/- for the injuries suffered by him as a result of the accident. The Motor Accident Claims Tribunal by its judgment and decree dated

20.01.2009 directed the appellant to pay the first respondent a sum of Rs.67,510/- together with interest at 7.5% per annum from the date of claim till the date of realization and also directed the appellant to pay a sum of Rs.2,973/- as costs.

3. Aggrieved by the Award dated 20.01.2009 passed by the Motor Accident Claims Tribunal and Prl. Sub Judge, Erode in MCOP. No.35 of 2008, the instant appeal has been filed by the Appellant / Transport Corporation.

4. Heard Mr.K.J.Sivakumar learned counsel for the Appellant and Mr.J.Prithivi, learned counsel for the first respondent.

5. The learned counsel for the Appellant submitted that the primary ground for challenge in the instant appeal is that the Tribunal failed to consider that the lorry parked on the road without any indicator alone is liable to compensate the first respondent due to its negligence and not the Appellant who is the owner of the bus.. The learned counsel for the appellant contended that the Tribunal erroneously awarded compensation for injuries sustained by the first respondent as well as directed the Appellant to reimburse the Medical Expenses which is wrong and amounts to duplicate payment. The learned counsel for the Appellant also contended that the Tribunal erroneously accepted 10% disability which is not correct. The learned counsel for the Appellant further contended that wound certificate, medical bills and discharge summary were not filed by the first respondent before the Tribunal.

6. Per contra, learned counsel for the first respondent submitted that the compensation awarded under the impugned Award passed by the Tribunal is a just compensation and does not call for any interference.

7. This Court after considering the materials available on record and after examining the Award which is under challenge and after hearing the submissions of the respective counsels, observes the following:

a) The first respondent has filed 11 documents before the Tribunal which were marked as Exs.P1 to P11 and two witnesses were examined namely PW1 and PW2 in support of his claim. No document has been filed by the Appellant before the Tribunal and only one witness was examined on the side of the Appellant.

b) The First Information Report and the Charge Sheet were marked as Ex.P1 and Ex.P4 respectively. Under Ex.P1, the case was registered only on the second respondent/driver of the bus and under Ex.P4, Charge Sheet was also filed against the second respondent/driver of the bus. It is evident that the accident occurred only due to the negligence of the bus driver and not due to the negligence of the lorry. Based on Exs.P1 & P4, the Tribunal has given a categorical finding that the driver of the

bus in which the first respondent was travelling is alone at fault.

c) The Tribunal has examined the medical bills produced by the first respondent and awarded a just compensation under the head medical charges incurred by the first respondent.

d) Though the PW2, doctor who treated the first respondent, stated that the first respondent suffered 20% disability due to the accident, the Tribunal has examined the disability suffered by the first respondent and awarded only 10% disability amounting to Rs.10,000/-, which is a just compensation.

8. Considering all the above, this Court is of the considered view that there is no merit in the appeal. Accordingly, the Appeal is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

9. Accordingly, the appellant is directed to deposit the balance award amount to the credit of MCOP. No.35 of 2008 on the file of the Motor Accident Claims Tribunal, Principal Sub Judge, Erode together with interest within a period of four weeks from the date of receipt of a copy of this Order. On such deposit being made, the first respondent is permitted to withdraw the amount lying to the credit of MCOP. No.35 of 2008 on the file of the Motor Accident Claims Tribunal, Principal Sub Judge, Erode with accrued interest by filing an appropriate application.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

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To

1.The Principal Sub Judge,
Motor Accident Claims Tribunal,
Erode.

2.The Record Clerk,
VR Section, High Court,
Chennai. (+2 copies)

+1 CC to Mr.A.K. Kumarasamy, Advocate sr 57765.
+1 CC to Mr.K.J. Sivakumar, Advocate sr 58090.

C.M.A.No.2125 of 2009 &
M.P.No.1 of 2009

BR(CO)
SP(14/11/2018)