

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.12.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2847 of 2018
and C.M.P.No.21683 of 2018

The Managing Director,
Tamil Nadu Transport Corporation,
Mettupalayam Road, Coimbatore.

.. Appellant

Vs.

1.Mrs.R.Rajamani
2.Nagaraj
3.T.Ramesh Periyasamy
4.The New India Assurance Co. Ltd.,
P.B.No.47, Kumaran Shopping Complex,
Kumaran Road, Tirupur-641 601.

.. Respondents

(R2 set exparte before the Tribunal)

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, against the judgment and decree dated 25.11.2014 made in M.C.O.P.No.536 of 2010 on the file of the Additional District Court No.3, (Motor Accident Claims Tribunal), Dharapuram.

For Appellant : Mr.K.J.Sivakumar

J U D G M E N T

The Civil Miscellaneous Appeal is filed against the award dated 25.11.2014 made in M.C.O.P.No.536 of 2010 on the file of the Additional District Court No.3, (Motor Accident Claims Tribunal), Dharapuram.

2.The appellant is the 4th respondent, 1st respondent is the claimant/petitioner and respondents 2 to 4 are the respondents 1 to 3 in M.C.O.P.No.536 of 2010 on the file of the Additional District Court No.3, (Motor Accident Claims Tribunal), Dharapuram. The 1st respondent filed the said claim petition, claiming a sum of Rs.10,00,000/- as compensation for the injuries suffered by her in the accident that took place on 29.10.2007.

3. According to the 1st respondent, on 29.10.2007, while the 1st respondent was travelling as a tourist in Qualis car bearing Registration No. TN-39-U-4343, the 2nd respondent, driver of the Qualis car drove the same in a rash and negligent manner with great speed and dashed against the bus which came in the opposite direction and the accident occurred. Due to the said impact, the 1st respondent sustained serious injuries and fractures.

4. The appellant-Transport Corporation filed counter statement and denied all the averments made by the 1st respondent. According to the appellant, the driver of the bus drove the vehicle with due care and caution, observing traffic rules and regulations. While crossing New Amaravathy river bridge, the Qualis car driven by the 2nd respondent came in a rash and negligent manner in opposite direction. Therefore, the driver of the bus stopped the bus with caution to avoid the accident. In spite of the same, the Qualis car came in opposite direction in a rash and negligent manner, without adhering the traffic rules and regulations and caused accident. The 2nd respondent had voluntarily invited the accident and contributed his negligence. Hence, the appellant is not liable to pay any compensation to the 1st respondent and prayed for dismissal of the claim petition.

5. Before the Tribunal, the 1st respondent examined herself as P.W.1 and two Doctors were examined as P.Ws.2 and 3 and 18 documents were marked as Exs.P1 to P18. On behalf of the appellant, no oral and documentary evidence was let in.

6. The Tribunal after considering the findings in M.C.O.P.Nos.680 and 730 of 2008, wherein it has already been held that both the drivers of the Qualis car and the appellant-Transport Corporation bus are equally responsible for the accident, upheld the same and awarded a sum of Rs.3,54,612/- as compensation to the 1st respondent and directed the 4th respondent herein to pay 50% of the award amount on behalf of the respondents 2 and 3 and the remaining 50% of the award amount to be paid by the appellant.

7. Aggrieved by the said award passed by the Tribunal, dated 25.11.2014 made in M.C.O.P.No.536 of 2010, the appellant-Transport Corporation has filed the present Civil Miscellaneous Appeal.

8.The learned counsel appearing for the appellant contended that the Tribunal erred in not considering Ex.P1, FIR which is registered against the 2nd respondent, driver of the Qualis car. The Tribunal ought not to have considered the evidence of P.W.1, which has not been corroborated by any other independent witnesses. The Tribunal erred in fixing 50% of negligence on the part of the driver of the appellant when there is no evidence to hold that the driver is responsible for the accident. The Tribunal ought not to have taken permanent disability of 1st respondent as 40%, which is on higher side. The Tribunal without properly appreciating the evidence on record, awarded the amounts, which are on higher side. Therefore, he prayed for setting aside the award passed by the Tribunal.

9.I have heard the learned counsel for the appellant and perused all the materials available on record.

10.The claimant/1st respondent has marked the FIR as Ex.P1, which shows that the accident had occurred due to the rash and negligent driving by the 2nd respondent, driver of the Qualis car. The 1st respondent also deposed to that effect as P.W.1. The accident had occurred since both the vehicles dashed against each other. The Tribunal considering the finding in M.C.O.P.Nos.680 and 730 of 2008, wherein it has been already held that both the drivers of the Qualis car and the appellant-Transport Corporation bus are equally responsible for the accident, upheld the same. I do not find any error in the reasoning of the Tribunal.

11.As far as the quantum of compensation is concerned, the Tribunal has fixed 40% of disability on the 1st respondent, as assessed by the Doctor and awarded a sum of Rs.80,000/- (Rs.2,000/- for 40%) towards disability, a sum of Rs.10,000/- towards extra nourishment, Rs.20,000/- towards pain and suffering and Rs.24,000/- towards loss of income during the treatment period. Considering Exs.P11 to P18, the medical bills, the Tribunal awarded a sum of Rs.2,20,612/- towards medical expenses. The Tribunal after considering both the oral and documentary evidence, awarded a total sum of Rs.3,54,612/- as compensation to the 1st respondent/claimant. In my considered opinion, the compensation awarded by the Tribunal is just and reasonable. In the above circumstances, this Court is not inclined to interfere with the award passed by the Tribunal.

12.Accordingly, the award passed by the Tribunal is hereby confirmed and the Civil Miscellaneous Appeal is dismissed. The 4th respondent and the Appellant-Transport Corporation are

directed to deposit 50% each of the award amount along with interest and costs, less the amount deposited, if any, within a period of twelve weeks from the date of receipt of a copy of this judgment. On such deposit, the 1st respondent is permitted to withdraw the award amount with interest and costs, after adjusting the amount already withdrawn, if any, by making necessary applications before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

gsa

To

1. The III Additional District Judge,
(Motor Accident Claims Tribunal), Dharapuram.

C.M.A.No.2847 of 2018
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PP (CO)
SSM(07/05/2019)



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