

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.12.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2776 of 2018

and

C.M.P.No.21153 of 2018

The Managing Director,
Tamil Nadu State Express
Transport Corporation Ltd.,
Pallavan Salai, Chennai.

.. Appellant

Vs.

1.A.Pappathi
2.V.Arulmary Selvaraj

.. Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, against the award dated 29.04.2017 made in M.C.O.P.No.317 of 2014 on the file of the Motor Accident Claims Tribunal, (Special Sub Court), Erode.

For Appellant : Mr.K.J.Sivakumar

J U D G M E N T

The Civil Miscellaneous Appeal is filed against the award dated 29.04.2017 made in M.C.O.P.No.317 of 2014 on the file of the Special Sub Court, (Motor Accident Claims Tribunal), Erode.

2.The appellant is the 2nd respondent, 1st respondent is the claimant/petitioner and 2nd respondent is the 1st respondent in M.C.O.P.No.317 of 2014 on the file of the Special Sub Court, (Motor Accident Claims Tribunal), Erode. The 1st respondent filed the said claim petition, claiming a sum of Rs.5,00,000/- as compensation for the injuries suffered by her in the accident that took place on 09.03.2010.

3.According to the 1st respondent, on 09.03.2010, the 2nd respondent, driver of the bus bearing Registration No.TN-01-N-4767, belonging to the appellant-Transport Corporation, drove the bus very speedily in a rash and negligent manner and dashed against one pick up Van bearing Registration No.TN-31-F-9684, in

which 1st respondent and others travelled. In the said impact, the 1st respondent and others sustained grievous injuries and fractures. The accident occurred only due to the rash and negligent driving by the 2nd respondent, driver of the bus, belonging to the appellant-Transport Corporation.

4.The appellant-Transport Corporation filed counter statement and denied all the averments made by the 1st respondent. According to the appellant, 2nd respondent, driver of the bus drove the vehicle with due care and caution, observing traffic rules and regulations. The pick up van in which the 1st respondent travelled came in a rash and negligent manner and dashed against the bus belonging to the appellant-Transport Corporation and caused the accident. Due to negligence on the part of the driver of the van in which 1st respondent travelled, the accident occurred. 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 marked 16 documents as Exs.P1 to P16. On behalf of the appellant and 2nd respondent, 2nd respondent was examined as R.W.1 and no documentary evidence was let in by them. The disability certificates from the District Medical Board were marked as Exs.C1 to C4.

6.The Tribunal after considering the pleadings, oral and documentary evidence, held that the accident occurred solely due to the rash and negligent driving by 2nd respondent, driver of the bus belonging to the appellant-Transport Corporation and awarded a sum of Rs.3,35,450/- as compensation to the 1st respondent and directed the appellant to pay the same.

7.Aggrieved by the said award passed by the Tribunal, dated 29.04.2017 made in M.C.O.P.No.317 of 2014, the appellant-Transport Corporation has filed the present Civil Miscellaneous Appeal.

8.The learned counsel appearing for the appellant contended that the Tribunal ought not to have considered the evidence of P.W.1, whose evidence has not been corroborated by any other independent witness. The Tribunal ought to have reduced the percentage of disability from 30%, as the same was on the higher side. Since the 1st respondent has failed to establish how the disability sustained by her would affect her future earning capacity, the Tribunal ought not to have adopted the multiplier method to calculate the loss of future earning. The Tribunal without properly appreciating the evidence on record, awarded the amounts 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.From the materials on record, it is seen that the 1st respondent has deposed as P.W.1 the manner in which the accident occurred. Ex.P1, FIR has been registered against the 2nd respondent, driver of the appellant-Transport Corporation bus. The Motor Vehicle Inspector's report, for the vehicles involved in the accident was marked as Ex.P5, wherein the Inspector has opined that the accident happened not due to any mechanical defect of both the vehicles. The appellant, contended that the accident occurred only due to the negligence on the part of the driver of the pick up van in which the 1st respondent travelled, but, except the 2nd respondent, bus driver of the Corporation, no other witness was examined to substantiate their case and to disprove the case of the 1st respondent. On the basis of the evidence of P.W.1 and Exs.P1 to P16 and considering the police investigation records, the Tribunal held that the accident occurred due to the rash and negligent driving by the 2nd respondent, who is the driver of the appellant-Transport Corporation. I do not find any error in the said reasoning of the Tribunal.

11.As far as the quantum of compensation is concerned, the Tribunal considering the oral and documentary evidence let in, awarded a total sum of Rs.3,35,450/- 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 Appellant-Transport Corporation is directed to deposit 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.

gsa

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Special Subordinate Judge,
(Motor Accident Claims Tribunal),
Erode.

Copy to:-

The Section Officer,
V.R.Section,
High Court, Madras-104.

RSI (CO)
KAK (22/02/2019)

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