

IN THE HIGH COURT OF JUDICATURE AT MADRAS

[Reserved on :20.02.2019]

[Pronounced on : 09.04.2019]

CORAM:

THE HONOURABLE Mr.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No. 1089 of 2011

P. Sundararajan ... Appellant/Petitioner

Vs.

The Managing Director,
TamilNadu State Transport
Corporation Ltd.,
No.12, Ramakrishna road,
Salem -7

...Respondent/Respondent

Prayer: This petition is filed U/s 173 of the Motor Vehicles Act, 1988 against the Decree and Judgment dated 03.09.2010, made in M.C.O.P.No.960 of 2006 on the file of the Motor Accident Claim Tribunal, II Additional Sub Judge, Salem.

For Appellant : Mr.V. Kumaravelan
For Respondent : Mr.D. Venkatachalam

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the Decree and Judgment dated 03.09.2010, made in M.C.O.P.No.960 of 2006 on the file of the Motor Accident Claim Tribunal, II Additional Sub Judge, Salem.

2. Brief facts in a nutshell are as follows:

(i) On 27.08.2006 at about 3.00 p.m when the appellant was riding his moped bearing Registration No.TN-41-D-3563, on the extreme left side of the road, near muniapan kovil near Mecheri Main Road, the bus owned by the respondent/Transport Corporation came at a very high speed. In order to control the situation, the driver of the Transport Corporation Bus applied sudden brake thereafter, it is seen that the moped hit the backside of the respondent bus. On account of the said accident the petitioner sustained serious blood injuries as well as fractures. Hence, the appellant was immediately taken to Pranav Hospital and he

was admitted as inpatient from 27.08.2006 to 07.09.2006 and now he was taking treatment as out patient.

(ii) The Mecheri police has registered a case against the driver of the said bus for offences under Sections 279 and 337 of I.P.C in crime No.331 of 2006 after obtaining statement from the appellant at Salem Pranav Hospital where he took treatment. But, after investigation the case was closed by the police as mistake of fact.

3. It is also seen from records that in the Tribunal, on behalf of the claimant two witnesses and documents Ex.P1 to P.7 were marked. On the side of the respondents, neither oral nor documentary evidences was let in.

4. The appellant/Sundararajan examined himself as P.W.1 and Dr.V.Muthusamy was examined as Ortho Doctor and he issued Ex.P.2/wound certificate. Ex.P.1 was the F.I.R copy, and Ex.P.3 was discharge summary which shows the details of how many days the petitioner was taken treatment. Ex.P.5 was the medical bills and EX.P6 and Ex.P.7 was the disability certificate and X-ray of the patient .

5. The Tribunal dismissed the petition on the ground that the accident occurred due to the negligent on the part of the driver. The relevant portion of the order is extracted hereunder:

"As a general rule, it is for the petitioner to prove that the respondent bus driver was negligent. The initial burden of making out of at least a prima facie case of negligence as against the respondent has heavily on the petitioner but once the onus is discharged, it will be for the respondent to show that the incident was the result of inevitable accident of contributory negligence on the part of the petitioner. It is not the case of the petitioner but, the respondent bus driver drove the bus in a rash and negligent manner and hit against him. But, the petitioner failed to control his vehicle and hit against the back side of the bus and caused accident. If at the time of accident, the respondent could reasonably foresee injury to the plaintiff the respondent owes a duty to prevent injury and failure to do that make him liable. In the instant case the petitioner himself caused accident by his negligent act it is held that the accident was due to the rash and negligent act of the petitioner. The petitioner failed to

establish prima facie case either by direct or circumstantial evidence that the defendant was negligent, the petitioner action must fail. The petitioner is not entitled to claim compensation from the respondent. The petition is devoid of merits and hence dismissed."

6. Challenging the same the appellant has filed this appeal.

7. The learned counsel for the appellant contend that from the oral evidence of P.W-1 that the appellant had sustained injuries and the accident has occurred due to the rash and negligent driving of the bus and he also agreed that he applied sudden brake to control the situation and further contend that P.W-2/Dr.V.Muthusamy, Ortho has issued wound certificate, which clearly states the nature and injuries sustained by the appellant and furthermore states that the appellant had controlled his moped due to the reason that the driver of the Transport Corporation bus had applied sudden brake. He further contend that a case has been registered in Mecheri police against the driver of the said bus for offences under Sections 279 and 337 of I.P.C in crime No.331 of 2006 Hence, prays to allow this appeal.

8. The learned counsel for the respondent contend that even though a case has been registered in Mecheri police against the driver of the said bus for offences under Sections 279 and 337 of I.P.C in crime No.331 of 2006, but it was closed as mistake of fact. Hence, prays to dismiss this appeal.

9. Heard both sides.

10. It appears that in the counter statement filed by the respondent/transport corporation, they have raised a specific plea that the accident has taken place due to the rash and negligent driving on the part of the injured himself, who drove the TVS Moped and hence, the respondent/Transport Corporation is not liable to pay any compensation. In order to substantiate the same, they have also examined R.W.1 viz., the driver of the bus, who could depose that on that day, he initially parked the bus in the bus stop and thereafter, he moved over for some distance and in order to board the passengers, stopped the bus again and in that process, the injured, who as riding the Moped came and dashed against the bus from behind and sustained injury.

11. The injured, who was examined as P.W.1, deposed that the accident has occurred due to the rash and negligent act of the driver of the bus and also filed Ex.P.1-FIR. The factum of the accident is not disputed and P.W.1 was get into the witness box and deposed his version and marked Ex.P.1-FIR. Though R.W.1 Driver of the transport corporation bus deposed that the TVS Moped driven by the claimant came and dashed from the behind but it is seen from the manner in which the driver of the bus had driven the vehicle categorically indicated that only after moving the bus from the bus stop, he suddenly applied break for picking up another passenger appears to be the cause of the accident. In short, a sudden application of the break while the vehicle was in movement caused the accident. Though a plea has been raised in the counter statement that the case under Ex.P.1 FIR was closed as a 'mistake of fact', no document has been produced before the Court, to substantiate the said plea raised by the Transport Corporation nor anyone connected with the investigation of the criminal case was summoned to substantiate the alleged plea of the closure of the FIR as a 'mistake of fact' as projected in the counter statement assumes significance and hence, based upon the above discussions, this Court is of the considered view that the manner of the accident has been clearly spelled out that the two wheeler has dashed behind the bus only due to the sudden break applied by the driver of the respondent/Transport Corporation only and hence, a contra finding rendered by the Tribunal that the accident has taken place due to the negligence on the part of the claimant is liable to be vacated and the same is hereby vacated.

12. However, after going through the evidence of P.W.1 and R.W.1 and Ex.P.1, this Court finds that the accident has taken place in the State highways while the claimant was riding the Moped.

Regulation 23 of the Rules of the Road Regulations, 1989, which reads thus:

"23. Distance from vehicles in front,- The driver of a motor vehicle moving behind another vehicle shall keep at a sufficient distance from that other vehicle to avoid collision if the vehicle in front should suddenly show down or stop."

13. In the decision of the Supreme Court in Civil Appeal NO.10145 of 2016 [Nishan Singh & Ors. Vs. Oriental Insurance Company Ltd., and Ors.], the Supreme Court has held as follows:-

"The Expression "sufficient distance" has not been defined in the Regulations or elsewhere. The thumb rule of sufficient

distance is at least a safe distance of two to three seconds gap in ideal conditions to avert collision and to allow the following driver time to respond. The distance of 10-15 feet between the truck and maruti car was certainly not a safe distance for which the driver of the maruti car must take the blame. It must necessary follow that the finding on the issue under consideration ought to be against the claimants."

14. It is to be stated that the injured/claimant examined himself as PW-1 and deposed that the accident has occurred due to the negligent act of the driver of the bus only and filed Ex.P.1 F.I.R. The factum of the accident was not disputed by the respondent/Transport corporation. Apart from that to prove the manner of the accident Ex.P.1. F.I.R was marked wherein it is categorically stated that the driver of the Transport Corporation drove the vehicle negligently and a case has been registered Under Sections 279 and 337 of I.P.C.

15. In view of the oral evidence of the injured, before the Tribunal the manner of the accident has been clearly spells out to the fact that the two wheeler was dashed behind the bus driver due to the sudden brake applied by the driver of the Transport Corporation Bus.

16. Hence, the finding of the Trial Court that the accident has taken place due to the negligence on the part of the claim is liable to be vacated and the same is hereby stands vacated. It remains to be stated when driving in a State High Way, the vehicle following another moving vehicle has to come in a safe distance further had the injured followed the safe distance, he could averted the accident and hence this Court finds that the claimant has been at 25% of the negligence while 75% of the negligence is fixed on the part of the driver of the Transport Corporation and hence this Court held that the accident has taken place due to the negligence of both the driver of the bus and driver of the moped at the ratio of 75:25%.

17. On the point of quantum of compensation both the parties have heard.

18. PW-2 Doctor has issued Ex.P.2 wound certificate wherein he has stated that:

a. Blunt Injury abdomen LAceration of
Left Lobe Liver & Haemoperitoneum.

b. Fracture 4th & 5th ribs left side chest. He underwent surgical procedure - Laparotomy and Peritoneal leave.

19. PW-2 Doctor has issued Ex.P.3 disability certificate wherein he has stated that:

Blunt injury abdomen and fracture ribs 4th and 5th left side chest and he had surgical treatment for Intra abdominal injury liver and conservative treatment for fracture ribs.

Surgical scar 21 cm long on the Mid-line of the abdomen.

Breathlessness while climbing stairs, ups & downs and finds difficulty in doing manual work and chest movements on the left side decreased. Chronic cough with expectoration. On radiological examination chest reveals Mal-union of 4th and 5th ribs left chest.

20. Taking into consideration the injuries suffered by the claimant and also the supporting evidence adduced by the medical evidence of PW-2/Doctor, the disability of the claimant is fixed at 35% is fixed and this Court arrived at the compensation as under:

For disability	-	Rs.52,500/-
Pain and suffering	-	Rs.15,000/-
Transportation	-	Rs.8,000/-
Nutrition	-	Rs.8,000/-
Loss of amenities	-	Rs.8,000/-
Attender charges	-	Rs.10,000/-
Medical Bills		
(as per Ex.P.5)	-	Rs.2,605/-
Total	-	Rs.1,04,105/-

21. In the result, this Court is inclined to pass the following order:

a) this Civil Miscellaneous appeal is allowed and the respondent/Transport corporation is directed to pay 75% of the award amount i.e Rs.78,078/- along with the interest at the rate of 7.5% within a period of 12 weeks from the date of receipt of a copy of this Judgment. The appellant is directed to pay the balance additional Court fee if any.

(b) On such deposit being made, it is open to the claimant to withdraw the same. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

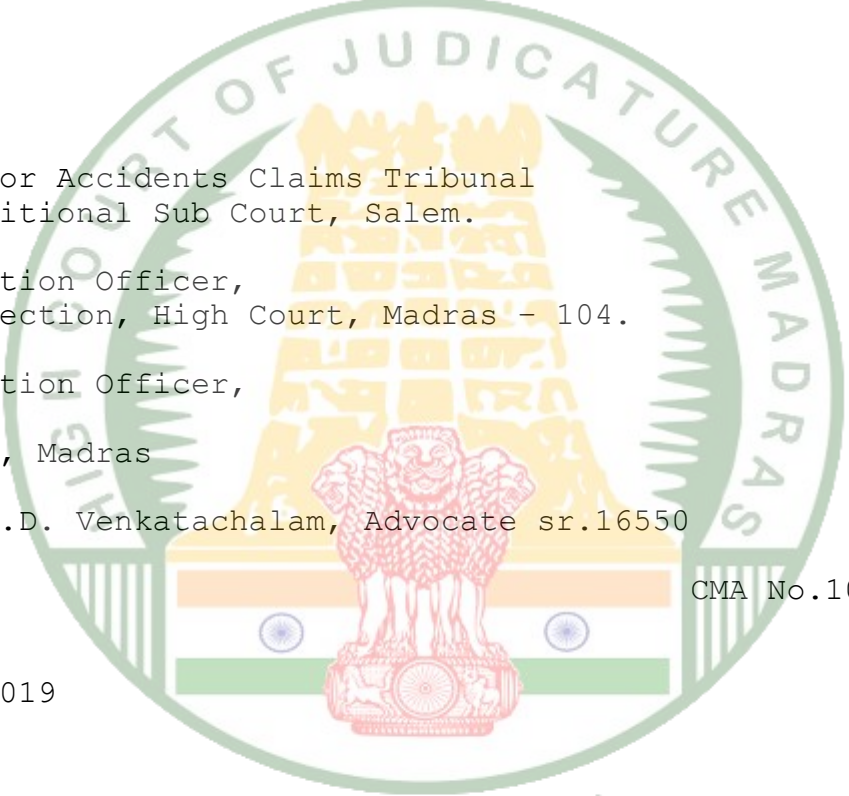
To.

1. The Motor Accidents Claims Tribunal
II Additional Sub Court, Salem.
2. The Section Officer,
V.R. Section, High Court, Madras - 104.
3. The Section Officer,
B Section,
High Court, Madras

+1cc to Mr.D. Venkatachalam, Advocate sr.16550

CMA No.1089 of 2011

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