

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

CIVIL MISCELLANEOUS APPEAL NO.3527 OF 2008

AND

M.P.NO.1 OF 2008

The Managing Director

Tamil Nadu State Transport Corporation Ltd

Division II

Chennimalai Road

Erode - 638 002

.... Appellant/2nd Respondent

Vs

1. P.V.Vijayakumar

.... Respondent/Petitioner

2. S.Ravi

.... Respondent/1st Respondent

3. V.S.Subramaniam

.... Respondent/3rd Respondent

4. Iffco-Tokio General Insurance Co.Ltd

Ponmani Towers,73 Avarampalayam Road,

New Siddhapudur,

Coimbatore - 641044

.... 4th Respondent/4th Respondent/
Respondent

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act against the Judgment and Decree dated 17.04.2008 passed by the Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Erode in MCOP No.26 of 2006.

For Appellant : Mr.S.V.Vasanthakumar

JUDGMENT

The Civil Miscellaneous Appeal has been preferred by the appellant/Transport Corporation, against the award of Rs.97,800/- passed by the Tribunal.

2.The case in brief, is as follows:

On 21.05.2005, at about 12.30 hours, when the first respondent/claimant was travelling as a pillion rider in his friend's (V.S.Subrmaniam) Motorcycle bearing Reg.No.TN 33 AB 7756, from Pallipalayam to R.S.Road, a Transport Corporation bus

bearing Reg.No.TN 33 N 1016, came in a rash and negligent manner and hit the two wheeler, due to which, the claimant sustained grievous injuries all over the body. Hence, the 1st respondent/claimant filed a claim petition before the Tribunal. After an elaborate trial, the Tribunal has awarded a total compensation of Rs.97,800/- with interest at the rate of 7.5% per annum from the date of petition, to the claimant.

3. Challenging the same, the appellant Transport Corporation has filed the present Civil Miscellaneous Appeal.

4. Despite ordering notice to the respondents and having been printed their names in the cause list, there is no representation on their behalf. Hence, the appeal is taken up for consideration on merits.

5. Heard the learned counsel for the appellant.

6. The learned counsel for the appellant submitted that the Tribunal erroneously fixed the negligence on the part of the driver of the bus belonging to the appellant herein. The learned counsel further submitted that in the absence of medical records, the Tribunal has erred in fixing the disability of the claimant at the rate of 17%; and the award of Rs.97,800/- as compensation to the claimant is on the higher side and hence, the same warrants interference by this Court.

7. In order to verify the negligence on the part of the driver of the Corporation bus, the examination of the award passed by the Tribunal is necessary. A perusal thereof would go to show that Ex.P.1 First Information Report discloses that the accident occurred only due to the rash and negligent driving of the bus driver. Further, the Tribunal has fastened the liability on the appellant Transport Corporation, after scrutinizing the evidence of PW.1/Claimant, Ex.P.2 Observation Mahazar, Ex.P.3.Rough Sketch and Ex.P.5, Motor Vehicle Inspector's Report. Apart from that, the driver of the bus was convicted for the said accident by the Judicial Magistrate Court, Tiruchengode and the driver has also paid the fine amount. Considering the evidence adduced as well as the documents produced, the Tribunal came to the conclusion that the accident occurred only due to the rash and negligent driving of the driver of bus and accordingly, fixed the liability on the appellant, which this Court is not inclined to interfere.

8. Regarding the quantum of compensation, the Tribunal by relying upon the evidence of doctor/PW 2, Ex.P.4 Wound Certificate and Ex.P.11 Disability Certificate, came to the conclusion that the claimant sustained 17% disability, due to

the injuries sustained by him in the accident. Even though the claimant has stated in his affidavit that he was working in a Private Company and was earning a monthly salary of Rs.15,000/-, no oral or documentary evidence has been adduced before the Tribunal. Hence, the Tribunal, considering the age of the claimant, fixed his monthly income as Rs.3,000/- reasonably and arrived at Rs.91,800/- as compensation towards loss of earning. Further, the Tribunal taking note of the nature of injuries sustained by the claimant and the period of treatment taken by him, awarded a sum of Rs.2,000/- towards medical expenses, Rs.2,000/-towards pain and suffering, Rs.1,000/- towards extra nourishment and Rs.1,000/- towards transport expenses, totalling to Rs.97,800/-. The amounts so awarded by the Tribunal under the above heads are just and reasonable and hence, the same are confirmed.

9. In the result, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected miscellaneous petition is closed. The appellant Transport Corporation is directed to deposit the award amount as ordered by the Tribunal with interest, after deducting the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the deposited amount, to the Savings Bank Account of the claimant/1st Respondent herein, through RTGS, within one week thereafter.

Sd/-
Assistant Registrar(Arbitration)

//True Copy//

Sub Assistant Registrar

vrn

To

1. The Motor Accident Claims Tribunal/
Chief Judicial Magistrate, Erode.
2. The Section Officer,
V.R.Section, Madras High Court, Chennai 104.

+1cc to Mr.S.V.Vasanthakumar, Advocate, S.R.No.58773

CMA.No.3527 of 2008 and
M.P.No.1 of 2008

VM(CO)
CS/04/03/2020