

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 16.12.2019

CORAM:

THE HON'BLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.1035, 1036 and 1037 of 2015

Minor Sathish Kumar
(Rep. By next friend
father Gunasekaran)

...Appellant in C.M.A.No.1035 of 2015

1.Gunasekaran
2.Selvi

...Appellants in C.M.A.No.1036 of 2015

Selvi

...Appellant in C.M.A.No.1037 of 2015

Vs

1.Managing Director
Tamilnadu State Transport Corporation Limited,
Trichy.

2.Karunanidhi

3.Tata AIG General Insurance Company Limited
No.1, Ethiraj Salai, Egmore,
Chennai.

...Respondents in all appeals

Common Prayer: Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicle Act, 1988, against the common judgement and decree dated 04.02.2014 made in M.C.O.P.Nos.317, 318 and 320 of 2009, on the file of Motor Accident Claims Tribunal, Sub-Court, Ariyalur.

(In all C.M.A's)

For Appellants : Mr.P.Parthi Kannan

For R1 : Mr.D.Venkatachalam

For R3 : Mr.E.Rajadurai
For Mr.M.B.Raghavan

COMMON JUDGMENT

These Civil Miscellaneous Appeals are filed against the award dated 04.02.2014 made in M.C.O.P.Nos.317, 318 and 320 of 2009, on the file of Motor Accident Claims Tribunal, Sub-Court, Ariyalur.

2.All the three appeals arise out of the same accident and common award and hence, they are disposed of by this common judgment.

3.The appellants are claimants in M.C.O.P.Nos.317, 318 and 320 of 2009, on the file of Motor Accident Claims Tribunal, Sub-Court, Ariyalur. The claimants in M.C.O.P.No.318 of 2009 filed the claim petition claiming a sum of Rs.5,00,000/- as compensation for the death of their son Chanthuru who died in the accident that took place on 08.03.2009. The claimants in M.C.O.P.Nos.317 &320 of 2009 filed the claim petitions claiming a sum of Rs.5,00,000/- and Rs.7,00,000/- respectively as compensation for the injuries sustained by them in the accident that took place on 08.03.2009. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by the rider of the two wheeler belonging to the 2nd respondent/owner of the vehicle and directed the 2nd respondent to pay a sum of Rs.1,69,200/- as compensation to the minor appellant in C.M.A.No.1035 of 2015, Rs.3,00,000/- as compensation to the appellants in C.M.A.No.1036 of 2015 and Rs.1,58,000/- as compensation to the appellant in C.M.A.No.1037 of 2015. Challenging the said award dated 04.02.2014 made in M.C.O.P.Nos.317, 318 and 320 of 2009, the appellants/Claimants have come out with the present appeals.

4.The learned counsel appearing for the appellants contended that the Tribunal erred in fixing the negligence on the part of the minor Sathish Kumar by considering Ex.P1/FIR without considering the fact that the minor Sathish Kumar sustained grievous injuries due to the accident and was immediately taken to hospital and the 1st respondent being the driver of the bus, taking advantage of the situation had lodged false complaint against the minor Sathish Kumar. The Tribunal failed to consider the evidence of P.W.1 to P.W.4 and P.W.6 examined on behalf of the appellants. The evidence of P.Ws.1 to 4 and 6 proves that the accident had occurred only due to rash and negligent driving by the driver of the bus. Under Motor Vehicles Act which is benevolent legislation while deciding the claim petition filed under the provisions of Motor Vehicle hyper technicalities need not be adopted. The Tribunal erred in relying on the Criminal proceedings. The Tribunal must decide the case based on the evidence let in before the Tribunal. The

Tribunal failed to see that the respondents 1 to 3 did not examine any eye witnesses before the Tribunal except the driver of the bus who was examined as R.W.3. The Tribunal ought to have fixed the entire negligence on the part of the driver of the bus and liability on the 1st respondent. The compensation awarded by the Tribunal is meagre and the appellants are entitled to reasonable compensation and prayed for allowing the appeal.

5.Per contra, Mr.D.Venkatachalam, learned counsel appearing for the 1st respondent-Transport Corporation contended that the amounts awarded by the Tribunal under different heads are just compensation and the appellants are not entitled for any enhancement and prayed for dismissal of the appeal.

6.Heard the learned counsel for the appellants as well as the 1st and 3rd respondents and perused the materials available on record.

7.From the materials on record, it is seen that the contention of the appellants that the accident had occurred due to rash and negligent driving by the driver of the Transport Corporation Bus. To substantiate their contention, the appellant Selvi, appellant in C.M.A.No.1037 of 2015 was examined as P.Ws 2 and 3, Minor Sathish Kumar/the rider of the motor cycle was examined as P.W.6, P.W.4/Thyyalnayagi is alleged to be the eye witness. On the contrary, it is the contention of the respondents 1 and 3 that the accident had occurred only due to rash and negligent riding by the minor Sathish Kumar. The 3rd respondent/Insurance Company also took a stand that the minor Sathish Kumar did not possess driving licence and the motor cycle was not insured with the 3rd respondent/Insurance Company. To substantiate their contention, the 1st respondent examined four witnesses R.Ws.1 to 4. The 3rd respondent examined R.W.5/Karthikeyan. Erumbilikurichi police has registered a case against the minor Sathish Kumar in Cr.No.49/09 under Sections 279, 337 & 304 (A) I.P.C., and Ex.P1/FIR was registered against minor Sathish Kumar, who drove the motor cycle at the time of accident. He further deposed that after investigation they filed charge sheet against minor Sathish Kumar and criminal case was pending when they gave evidence. R.W.3, the driver of the bus deposed that only minor Sathish Kumar drove the motor cycle in a rash and negligent manner and dashed against the bus and caused the accident. It is the contention of the appellant that the motor cycle came from North to South direction while the bus was coming against from South to North direction, the accident had occurred on the western side of the road which shows that the motor cycle has gone to side of the road that is western side and dashed against the bus. If really the appellant in C.M.A.No.1035 of 2015, the minor Sathish Kumar was riding the motor cycle on the road at the eastern side of the road which is

left hand side of the motor cycle, as per Ex.R2/rough sketch, it is seen that the accident had occurred in the western side and the side where the bus was moving. This shows that the rider of the motor cycle was at fault and the accident had happened on the western side while the rider of the motor cycle was coming from North to South. Against the evidence of R.Ws.1 to 3, Ex.P1/FIR, Ex.R1/charge sheet and Ex.R2/rough sketch, the appellant examined Ex.P4/Thyyalnayagi. According to P.W.4, she was travelling in the bus at the time of accident. The driver of the bus drove the bus in a rash and negligent manner. She has not produced any proof for having travelled in the bus at the time of accident. She did not know the number of passengers travelled in the bus and she did not know from where the bus started and destination of the bus. She answered in the negative that she saw the rider of the motor cycle, while in the cross examination, she answered that she did not know him. In view of the contradictory answers given by P.W.4, the Tribunal rightly did not believe the evidence of P.W.4 while FIR and evidence of Rws.1 to 3 and Exs.R1, 2 proves that the accident had occurred only due to rash and negligent riding by the minor Sathish Kumar at the time of accident. Sathish Kumar was minor and he did not possess driving licence and he drove that the motor cycle with two pillion riders. The appellants failed to prove that the motor cycle belonging to 2nd respondent was insured with 3rd respondent/Insurance Company. Considering these facts, the Tribunal has rightly dismissed the claim petition against the respondents 1 to 3 and directed the 2nd respondent/owner of the motor cycle to pay the compensation to the appellants. There is no error in the award of the Tribunal warranting interference by this Court.

8. In the result, all the three Civil Miscellaneous Appeals are dismissed and award of the Tribunal is confirmed. The 2nd respondent/owner of the motor cycle is directed to deposit the entire amount awarded by the Tribunal along with interest and cost, less the amount, already deposited if any, within a period of six weeks from the date of receipt of copy of this judgment. On such deposit,

(i) the appellants in C.M.A.No.1036 of 2015 are permitted to withdraw the entire amount awarded by the Tribunal along with proportionate interest and costs on the basis of apportionment fixed by the Tribunal, less the amount if any, already withdrawn.

(ii) the appellant in C.M.A.No.1037 of 2015 is permitted to withdraw the entire amount awarded by the Tribunal along with interest and costs fixed by the Tribunal, less the amount if any, already withdrawn.

(iii) The share of the minor/appellant in C.M.A.No.1035 of 2015 is directed to be deposited in any of the Nationalized Bank, till the minor/appellant attains majority. The 1st appellant/father of the minor in C.M.A.No.1036 of 2015 is permitted to withdraw the accrued interest, once in three months for the welfare of the minor. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1.The Sub-Judge,
Motor Accident Claims Tribunal,
Ariyalur.

2.The Section Officer,
V.R.Section,
High Court,
Madras.

+1cc to M/s.D.Venkatachalam, Advocate Sr.104710
+3cc to M/s.S.Kaithamalai Kumaran, Advocate Sr.105482, 105555,
105556

C.M.A.Nos.1035, 1036 and 1037 of 2015

rr[co]
srg 19/11/2020

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