

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.07.2019

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.Nos.2234 and 2235 of 2009
and
M.P.Nos.1 and 1 of 2009

The Managing Director,
Tamil Nadu State Transport Corporation,
Villupuram Division.
in both CMAs

.. Appellant

Vs.

1. Elumalai
2. Mohamad Dava
3. United India Insurance Company Ltd.,
Dindivanam.

.. Respondents in CMA.No.2234 of 2009

1. Kuppusamy
2. Mohamad Dava
3. United India Insurance Company Ltd.,
Dindivanam.

.. Respondents in CMA.No.2235 of 2009

Common Prayer: These Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 21.03.2007 in M.C.O.P.Nos.831 and 775 of 2005 on the file of the Motor Accidents Claims Tribunal, Sub Court, Gingee.

For Appellant : Mr.S.V.Vasanthakumar
For R1 : T.Dhanyakumar
For R2 & R3 : No appearance

COMMON JUDGMENT

Both these appeals have been preferred by the appellant Transport Corporation against a common award dated 21.03.2007 passed by the Motor Accidents Claims Tribunal, (Sub Court), Gingee, in M.C.O.P.Nos.831 and 775 of 2005, arising out of the same accident that had occurred on 21.11.2001. As such, they were heard together and are decided by this common judgment.

2.The facts leading to the filing of these appeals, are as follows:

On 21.11.2001, the first respondent in both CMAs/claimants were travelling in the bus bearing Registration No.TN32 N 0355 belonging to the appellant / Transport Corporation. At about 8.15 pm, when the bus was nearing Gingee Kottai Chelliamman Temple, a private bus bearing Registration No. TN 25 A 9199, belonging to the second respondent and insured with the third respondent insurance company, came in a rash and negligent manner from the opposite direction and dashed against the appellant transport Corporation bus. Due to the said impact, the first respondent(s)/claimants sustained grievous injuries. Stating so, the claimants filed respective claim petitions claiming compensation. On consideration of the materials and evidence available on record, the Tribunal held that the accident had occurred due to the negligent act on the part of the drivers of both buses and accordingly, fastened liability on the appellant transport corporation and the insurer of the private bus at 50% each and ultimately awarded a total compensation of Rs.4,82,000/- to the claimant in MCOP.No.831/2005 and Rs.11,000/- to the claimant in MCOP.No.775 of 2005 with interest at the rate of 7.5% per annum from the respective date of petitions. Aggrieved over the same, the appellant Transport Corporation has preferred the present appeals.

3.The learned counsel for the appellant Transport Corporation has submitted that the negligence was on the part of driving of the driver of the private bus, however, the Tribunal has erred in holding that the driver of the appellant transport corporation bus was also equally responsible for the accident and accordingly, fastening 50% liability on the appellant Transport Corporation. He also submitted that the quantum of compensation awarded by the Tribunal is excessive, exorbitant and disproportionate to the injuries sustained by the first respondent(s) and hence, the same has to be reduced substantially.

4.Per contra, the learned counsel for the first respondent (s)/claimants submitted that after considering the oral and documentary evidence available on record, the Tribunal has rightly rendered its finding on negligence and awarded the just compensation and hence, the same do not call for any interference at the hands of this Court.

5.Heard the learned counsel for the appellant and the learned counsel for the first respondent(s)/claimants and perused the materials available on record carefully and meticulously. Despite the service of notice, there is no representation for the respondents 2 and 3.

6. On the side of the claimants, four witnesses were examined as P.W.1 to P.W.4 and nine documents were marked as Exs.P1 to P9. However, no one was examined and no document was marked on the side of the appellant Transport Corporation. Placing reliance on Ex.P1 First Information Report and P.W.1, the Tribunal was of the view that the appellant Transport Corporation bus and the private bus dashed against each other and there was a head-on-collision. Though the appellant transport corporation took a stand before the Tribunal that the accident had occurred due to the rash and negligent driving of the driver of the private bus, the Tribunal has disbelieved the same and observed that the driver of the appellant transport corporation would have averted the accident, if he was diligent and careful in driving. Accordingly, the Tribunal has concluded that the accident was caused due to the fault on part of the drivers of two buses equally. Ultimately, the Tribunal has fastened the liability on the appellant transport corporation and the insurer of the private bus at 50% each. This Court finds no reason to differ with the findings so rendered by the Tribunal and hence, the same are confirmed as such.

7. As regards the quantum of compensation, the Tribunal has awarded a total compensation of Rs.4,82,000/- to the first respondent/claimant in CMA.No.2234/2009 (MCOP.No.831/2005). The Tribunal has taken note of the evidence of P.W.1/claimant, who deposed that he was aged 37 years and was earning a sum of Rs.5,000/- per month; in the accident, he sustained multiple injuries in all over the body; he initially took treatment at Government Hospital, Gingee as inpatient for three months and thereafter, at K.M.C. Hospital, Chennai. P.W.4/Doctor in his evidence, has narrated about the nature of the injuries sustained by the first respondent/claimant and he issued Ex.P8-disability certificate to the tune of 50%. The Tribunal, after taking note of the age, avocation, income and the injuries sustained by the first respondent/claimant, has taken his monthly income at Rs.4500/-; adopted the multiplier of 16 and permanent disability at 50%; and quantified the compensation under the head "loss of income due to disability" at Rs.4,32,000/- ($54,000/- \times 16 \times 50/100$). The Tribunal has rightly determined the income, adopted the multiplier and assessed the loss of income for the permanent disability suffered by the first respondent/claimant and hence, the same does not require any interference by this Court. That apart, the Tribunal has awarded Rs.30,000/- towards pain and suffering, Rs.15,000/- towards extra nourishment, Rs.5,000/- towards transport charges, which are just and very reasonable and hence, the same need not be interfered with by this Court.

8. In respect of the total compensation awarded by the Tribunal at Rs.11,000/- to the first respondent/claimant in

CMA.No.2235 of 2009 (MCOP.No.775 of 2005), considering the materials and evidence available on record, the Tribunal has awarded Rs.6,000/- towards simple injuries, Rs.2000/- towards pain and suffering, Rs.3,000/- towards loss of income, which in the opinion of this Court, are just and reasonable, having regard to the nature of the injuries sustained by the first respondent/claimant and hence, the same are confirmed as such.

9.Thus, affirming the award passed by the Tribunal, these Civil Miscellaneous Appeals are dismissed. No costs. The appellant/Transport Company is directed to deposit their liability (50%) of the award amount along with interest and costs, as ordered by the Tribunal, after deducting the amount, if any, already deposited within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit, the Tribunal shall transfer the amount lying in the deposit to the respective savings bank accounts of the first respondent(s)/claimants, through RTGS within a period of one week thereafter. Consequently, connected Miscellaneous petitions are closed.

-s/d-

Assistant Registrar (CCC)

True Copy

Sub-Assistant Registrar

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To

1.The Subordinate Judge
Motor Accidents Claims Tribunal
Gingee.

2. The Section Officer,
VR Section, High Court,
Madras.

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C.M.A.Nos.2234 & 2235 of 2009
and
M.P.Nos.1 and 1 of 2009

SSD (CO)
SP(16/09/2020)