

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.2899 of 2009

and

M.P.No.1 of 2009

The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Trichirapalli District & Munsif Town.
... Appellant/3rd Respondent

Vs.

1. R. Anbalagan
2. S.Maruthachalam
(R2 given up before the Tribunal)
3. The Branch Manager,
Oriental Insurance Company Ltd.,
Bazaar Street, Shan Complex,
Mattencheri, Cochin, Kerala State.
... Petitioner/ Respondents
Respondents 1 & 2

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 10.09.2008 made in M.C.O.P.No.237 of 2007 on the file of the Motor Accident Claims Tribunal and Motor Accident Claims Tribunal Judge, Thiruvarur.

For Appellant : Mr.S.V.Vasantha Kumar

For R3 : Mr.S.K.Krishnamurthy

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J U D G M E N T

This appeal is preferred by the appellant Transport Corporation against the judgment and decree dated 10.09.2008 passed by the Motor Accident Claims Tribunal, Thiruvarur (for brevity, "the Tribunal") in M.C.O.P.No. 237 of 2007.

2.The case in brief, is as follows:

On the fateful day, ie., on 30.07.2007, at about 5.00 hours, the first respondent/claimant was travelling as a cleaner in a lorry bearing registration No.TN47 H 1192 belonging to the second respondent herein and insured with the third respondent insurance company. When the said lorry was proceeding from Trichy to Karur, a bus bearing registration No.TN45 N 2168 belonging to the appellant Transport Corporation came in a rash and negligent manner from the opposite direction and dashed against the lorry. Due to the said impact, the first respondent/claimant sustained grievous injuries, for which, he filed a claim petition claiming a sum of Rs.6,00,000/- as compensation. On consideration of the materials and evidence available on record, the Tribunal concluded that the accident had occurred due to the rash and negligent driving of the drivers of both the bus and the lorry and accordingly fixed the liability on the appellant Transport Corporation and the third respondent/insurer of the lorry at 50% each and awarded a total compensation of Rs.1,21,700/- with interest at the rate of 7.5% per annum from the date of petition. Aggrieved over the same, the appellant Transport Corporation has filed the present Civil Miscellaneous Appeal.

3.The learned counsel for the appellant Transport Corporation contended that the Tribunal failed to note that with respect to the accident, the FIR was registered only against the driver of the lorry and as such, the 50% liability fixed on the appellant Transport Corporation is not sustainable in law. The learned counsel further submitted that the quantum of compensation awarded by the Tribunal is excessive and exorbitant and hence, the same has to be reduced.

4.Heard the learned counsel appearing for the appellant and learned counsel appearing for the third respondent insurance company and perused the materials available on record carefully and meticulously.

5.It is seen that the first respondent/claimant is not ready in notice. Even though this appeal was admitted and a conditional order of stay was granted way back in the year 2009, the appellant Transport Corporation has not taken proper steps to serve papers to the first respondent, even at this length of time. However, considering the fact that the appeal is of the year 2009, this Court is inclined to proceed with the matter on merits.

6.With regard to the finding on negligence, P.W.1/respondent/ claimant, who deposed that he was working as a cleaner in the lorry involved in the accident; due to the rash and negligent driving of the driver of the appellant's bus, the

accident had occurred; and the driver of the lorry did possess the valid licence, whereas, R.W.2/conductor of the bus stated in his evidence that the accident had happened, due to the rash and negligent driving of the driver of the lorry; Ex.P1 -FIR was also registered only against the driver of the lorry. Ex.P2 -Motor Vehicle Inspector's reports disclosed that the left portion of the lorry was severely damaged. Ex.P3 Motor vehicle Inspector's report revealed that the right side of the front portion of the bus was damaged. However, there was no report to the effect that the accident had occurred due to the mechanical defect of either of the vehicles. Considering those oral and documentary evidence and also taking note of the fact that no rough sketch was marked by either side, to demonstrate the manner of the accident, the Tribunal has arrived at the conclusion that there was head-on collision between the bus and the lorry and the accident had occurred on account of the negligence on the part of both the drivers of the vehicles at 50% each and accordingly, directed both the appellant Transport Corporation and the owner/insurer of the lorry to pay the compensation, jointly and severally. This Court is not inclined to interfere with the said factual finding rendered by the Tribunal.

7.As regards the quantum of compensation, P.W.1/injured in his evidence stated that he was aged 27 years and was earning a sum of Rs.10,000/- per month by working as a cleaner. P.W.2/Doctor, who examined the claimant, deposed in his evidence that the first respondent/claimant sustained fracture and grievous injuries. After assessing the first respondent/claimant, the doctor issued Ex.P9-disability certificate to the tune of 30%. Ex.P10 and P11 are X-rays, which revealed that the first respondent/claimant sustained multiple injuries. The Tribunal, after taking note of the age, avocation, income and the injuries sustained by the first respondent/claimant, has taken the monthly income at Rs.3,000/- (Rs.100/- per day) and awarded Rs.6,000/- (Rs.3,000/- x 2 months) for loss of income during treatment period, which is fair and reasonable and the same is hereby confirmed. Considering the percentage of disability sustained by the first respondent/claimant, the Tribunal has rightly awarded Rs.75,000/- towards permanent disability and loss of earning capacity, which warrants no interference by this Court.

8.That apart, the Tribunal has determined Rs.28,700/- towards medical charges, as per Ex.P6 -medical bill, which is the actual medical expenses incurred by the first respondent/claimant for his treatment and the same is hereby confirmed. Further, the Tribunal has quantified Rs.10,000/- towards pain and suffering, Rs.1,000/- towards extra nourishment, Rs.1,000/- towards transportation, which, in the

opinion of this Court, are fair, just and reasonable and the same do not call for any interference.

9. In fine, this Civil Miscellaneous Appeal is dismissed by confirming the judgment and decree passed by the Tribunal. No costs. The appellant Transport Corporation is directed to deposit their share of award amount (50%) with interest and costs, less the amount already deposited, if any, 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 same to the savings bank account of the first respondent/claimant through RTGS within a period of one week thereafter. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-IX)

// True Copy //

Sub Assistant Registrar

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To

1. Motor Accident Claims Tribunal Judge,
Motor Accident Claims Tribunal,
Thiruvavur.
2. The Section Officer,
VR Section, High Court,
Madras.

C.M.A.No.2899 of 2009
and
M.P.No.1 of 2009

KK (CO)
CSR: 04/02/2020

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