

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.09.2019

CORAM :

THE HONOURABLE MRS. JUSTICE S.RAMATHILAGAM

C.M.A.No.2158 of 2015

and

M.P.No.1 of 2015

The Managing Director,
Tamil Nadu State Transport
Corporation Limited,
Kumbakonam, Thanjavur District. .. Appellant/Respondent

-vs-

Senthil Kumar,
S/o.Sengottaiyan. .. Respondent/Petitioner

APPEAL under Section 173 of the Motor Vehicles Act, 1988 to set aside the judgment and decree dated 11.03.2013, made in M.C.O.P.No.102 of 2008 on the file of the Motor Accident Claims Tribunal, Subordinate Judge, Sankari.

For Appellant : Mr.D.Venkatachalam

For Respondent: Mr.S.P.Yuvaraj

JUDGMENT

This appeal has been preferred by the Managing Director of the Tamil Nadu State Transport Corporation aggrieved against the judgment and decree dated 11.03.2013, made in M.C.O.P.No.102 of 2008 on the file of the Motor Accident Claims Tribunal, Subordinate Judge, Sankari.

2.The brief facts of the claim petition are as follows:-

On 08.11.2007, at about 5.30 p.m., the respondent was driving the Yamaha motor bike bearing Regn.No.TN 37 H 8681 along with his friend one Karthik as a pillion rider with due care and caution in a normal speed and when nearing Parvathibai Kalyana Mandabam at Sankari, Tiruchengode main road, a bus bearing Regn.No.TN 49 N 1643 came from opposite direction in a rash and negligent manner, hit the cyclist one Prabakaran and suddenly turned right side and hit against the respondent's motor bike. The respondent and the pillion rider were thrown out from the vehicle and sustained grievous injuries. The accident had

happened due to the rash and negligent act of the driver of the appellant. Due to the impact of the accident, the respondent and his friend sustained grievous injuries and lost their consciousness. The respondent sustained grievous injuries on his left leg, right leg knee and all over the body. Immediately, the respondent was taken to the Government Hospital, Sankari for first aid and then shifted to Ramakrishna Hospital, Coimbatore for better treatment.

3.The respondent filed M.C.O.P.No.102 of 2008 on the file of the Motor Accident Claims Tribunal, Subordinate Judge, Sankari claiming compensation against the appellant.

4.The brief averments of the counter statement filed by the appellant/Transport Corporation are as follows:-

The appellant states that the claim petition is false, frivolous, unsustainable in law and on facts. The appellant does not admit any of the allegations contained in the petition, excepting those that are specifically admitted herein and put the respondent in strict proof of the same. The appellant denies the alleged accident, age, occupation, income, previous health condition, nature of injuries sustained, period of treatment, disability and medical expenses incurred by the respondent and it is for the respondent to prove the same with acceptable documentary evidence. The appellant submits that the amount claimed by the respondent is highly excessive, exorbitant and calculated without any legal basis. The respondent is put to prove the age, occupation and income through legally valid documents. The disability as alleged by the respondent is not true and denied by the appellant. The disability caused due to the accident as alleged by the respondent is false and denied.

5. The tribunal on considering the evidence and documents available on record, has give finding that the accident had occurred due to the rash and negligence on the part of the Transport Corporation Bus and directed the Transport Corporation to pay the compensation to the claimants. The sum awarded by the tribunal under various heads is as follows;

Heads	Sum awarded by the Tribunal (Rs.)
Partial permanent disability	40,000 (2000 x 20)
Pain and suffering	10,000
Extra nourishment	5,000
Transport expenses	5000
Attender charges	5,000

Heads	Sum awarded by the Tribunal (Rs.)
Damages to cloths	1,000
Loss of income during treatment for 4 months	18,000 (4500 x 4)
Medical expenses	200
Total	84,200

6. The grievance of the appellant is that the Tribunal has not considered the evidence of P.W.1, which has not been corroborated by any other independent evidence. The Tribunal has also failed to consider the fact that FIR has been registered against the rider of the motor cycle, who had driven the same in a rash and negligent manner and dashed against the bus, that too, after the bus was stopped on the left side of the road. The evidence of P.W.1, who is none other than the conductor of the appellant Transport Corporation as well as the eye-witness to the accident, are relied very much in the FIR. The Tribunal ought to have fixed some contributory negligence against the rider of the motor cycle because, he was traveling with two other persons and because of three persons traveling in the said vehicle, they lost balance and dashed against the bus. Hence, the finding of the Tribunal on the aspect of negligence and further, the sum determined by the Tribunal as compensation without any proof of age, income and occupation and the assumption made by the Doctor, P.W.3, is also on the higher side.

7. On hearing the learned counsel on both sides and perusing the materials placed on record, it is observed that the accident has occurred on 08.11.2007, when the respondent was driving the Yamaha Motor Bike bearing Regn.No.TN 37 H 8681 along with his friend Karthik as a pillion rider and at that time, the appellant bus bearing Regn. No.TN 49 N 1643 which came in the opposite direction in a rash and negligent manner hit the cyclist one Prabaharan and again turned suddenly on the right side and hit against the respondent's two wheeler and thereby, the respondent as well as the pillion rider sustained injuries and claimed compensation.

8. Though the appellant deny the mode of accident and also the negligent aspect and the compensation claimed under various heads, the Tribunal discussed the evidence and analysed the documents and findings that it is the driver of the bus, who has driven the same in a rash and negligent and all of a sudden, turned right side to avoid the hit against the cyclist and dashed against the respondent's two wheeler and caused the accident. Hence, the negligence is on the part of the driver of the bus and the Tribunal has also given an elaborate discussion

by examining P.W.1 and considering documents, which are all very much corroborated by the evidence of P.W.1.

9.The evidence of the conductor was not considered by the Tribunal because, he was traveling on the back side of the bus and there was no chance for him to witness anything that happened in the front side of the bus. Hence, the evidence of P.W.1 and other witnesses and the recitals in the FIR are all very much prove the fact that it is the rash and negligent driving on the part of the driver of the bus, that resulted in the accident. While determining the compensation also, the Tribunal has observed all these facts and has awarded a reasonable sum. Hence, the evidence of the conductor not considered by the Tribunal is very much proper because, he is not witness to see the accident. Hence, the finding of the Tribunal by fixing negligence on the part of the driver of the bus is very much based on evidence as well as documents and the finding of the Tribunal and the sum awarded by the Tribunal is very much reasonable under the heads and does not require any interference by this Court.

10. In the result, this Civil Miscellaneous Appeal is dismissed, confirming the judgment and award passed by the Tribunal in MCOP NO.102 of 2008 dated 11.03.2013. No costs. Consequently, connected miscellaneous petition is closed.

11. The appellant/Transport Corporation is directed to deposit the entire award amount ordered by the tribunal along with interest and costs, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the claimant/respondent herein is permitted to withdraw the award amount along with interest and costs.

Sd/-
Assistant Registrar(CS-IV)

//True copy//

Sub Assistant Registrar

abr

To
The Subordinate Judge
The Motor Accident Claims Tribunal,
Sankari.

Copy To

The Section Officer,
VR Section, High Court, Madras

+1cc to Mr.D.Venkatachalam, Advocate SR.No.77805

+1cc to Mr.S.P.Yuvaraj, Advocate SR.No.77914

C.M.A.No.2158 of 2015

PPA(CO)
GMY(23/01/2020)