

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.11.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

CMA.No.2210 of 2012

Suresh ...Appellant/Claimant
.Vs.

1.Selvakumar
2.Managing Director,
Tamilnadu State Transport Corporation,
Vellore. ...Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 07.06.2012 passed in MCOP.No.81 of 2011 on the file of the Motor Accident Claims Tribunal / Sub Court, Tirupattur.

Appellant: Mr.PA.Sudesh Kumar

R1 : No appearance

R2 : Mr.K.J.Sivakumar

JUDGMENT

The appellant is the claimant in MCOP.No.81 of 2011 on the file of the Motor Accident Claims Tribunal / Sub Court, Tirupattur. He filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 praying to award a compensation of Rs.7,00,000/- for the injuries sustained by him in a road accident on 25.01.2007.

2. The case of the claimant in nutshell is as follows:

On 25.01.2007, the claimant was a pillion rider in a bicycle ridden by one Kuppusamy and both of them were travelling on Tirupattur - Tiruvannamalai Main Road. When they were nearing C.K.C theatre, at about 07.00 p.m, a speeding TNSTC bus bearing Registration No. TN 32 N 1879 hit the bicycle, as a result whereof, the rider of the bicycle and the claimant fell down and sustained injuries all over their body. According to the claimant, while Kuppusamy died on the spot he sustained injuries and was rushed to a nearby hospital. His further contention is that the rash and negligent driving of the driver of the bus belonging to the second respondent / Tamil Nadu State Transport Corporation was the cause of the accident and therefore he is entitled to be compensated by the Tamil Nadu State Transport Corporation.

3. The first respondent / driver of the bus remained absent before the Tribunal and therefore, he was set ex-parte. The second respondent / Tamilnadu State Transport Corporation contested the claim petition and the learned Subordinate Judge / Motor Accident Claims Tribunal, Tirupattur after analysing the evidence on record, dismissed the claim petition, on the ground that, since the claimant did not adduce sufficient evidence to show that he sustained injuries in the accident. Aggrieved over the orders passed by the Tribunal, the appellant / claimant has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

4. Mr.PA.Sudesh Kumar, learned counsel appearing for the appellant drew the attention of this Court to the OP chit issued by the Government Hospital, Chennai and contended that the claimant had sustained fracture on his left shoulder and Dr.Elangovan (PW2) had also assessed the partial permanent disability suffered by the claimant as 35%, as evidenced by the disability certificate (Ex.P6). His specific contention is that the Tribunal without considering these two documents had dismissed the claim petition.

5. Per contra, Mr.K.J.Sivakumar, learned counsel appearing for the second respondent / Tamilnadu State Transport Corporation contended that in the FIR (Ex.P1), there is no mention about the injuries sustained by the claimant and that he was only advised to take x-ray on his left shoulder by the doctor who examined him immediately after the accident. He also drew the attention of this Court to the disability certificate, which was issued in the year 2011 i.e. after four years of the accident and contended that Dr.Elangovan (PW2) even without verifying the discharge summary and other hospital records, had assessed the partial permanent disability as 35% and therefore the Tribunal was right in dismissing the entire claim petition.

6. A perusal of the out-patient slip (Ex.P2) shows that the claimant on the date of the accident took treatment as an out patient in the Government Hospital, Chennai and he was advised to take x-ray on his left shoulder. However, the x-ray and the report are not filed by the claimant. It is also relevant to point out that Dr.Elangovan (PW2) examined the claimant after four years of the accident and had assessed the partial permanent disability as 35% without verifying the medical records.

7. However, it is pertinent to point out that the claimant was a pillion rider in the bicycle and the rider of the bicycle died on the spot. In the facts and circumstances, it can be safely concluded that the claimant would have also sustained some injuries on account of the accident and since no evidence was adduced by him to prove that the injuries

sustained by him are grievous in nature a sum of Rs.15,000/- is awarded with interest at the rate of 7.5% per annum.

8. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed.
No costs.

(ii) The orders passed by the Tribunal is set aside.

(iii) The second respondent / Tamilnadu State Transport Corporation is directed to deposit the compensation amount awarded by this Court i.e., Rs.15,000/- together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of MCOP.No. 81 of 2011 on the file of the Motor Accident Claims Tribunal / Sub Court, Tirupattur within a period of four weeks from the date of receipt of a copy of this order.

(vi) On such deposit being made, the claimant is at liberty to withdraw the same after following due process of law.

Sd/-

Assistant Registrar(CS-VIII)

//True copy//

Sub Assistant Registrar

mtl

To

The Motor Accidents Claims Tribunal,
The Subordinate Judge,
Tirupattur.

Copy To

The Section Officer,
VR Section, High Court, Madras

+1cc to Mr.K.J.Sivakumar, Advocate SR.No.92588

+1cc to Mr.PA.Sudesh Kumar, Advocate SR.No.92245

CMA.No.2210 of 2012

BS(CO)

GMV(21/07/2020)