

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.1458 of 2016
and C.M.P.No.11202 of 2016

The Managing Director,
Tamil Nadu State Transport
Corporation,
Rangapuram, Vellore.

... Appellant /3rd Respondent

Vs.

- 1.N.Ravi ...1st Respondent/Petitioner
- 2.Chandar ...2nd Respondent/1st Respondent
- 3.Cholamandalam M.S.General Insurance Company Ltd.,
NO.72, Rajaji Salai,
Fifth Floor, DIAM House, Chennai-600 001.
...3rd Respondent/2nd Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 05.03.2016 made in M.C.O.P.No.221 of 2004 on the file of the Motor Accidents Claims Tribunal, Sub-Court, Gudiyattam, Vellore District.

For Appellant : Mr.S.Sairaman

For R2 & 3 : No Appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 05.03.2016 made in M.C.O.P.No.221 of 2004 on the file of the Motor Accidents Claims Tribunal, Sub-Court, Gudiyattam, Vellore District.

2.The case in brief is as follows:

On the fateful day, i.e., on 22.04.2004, the first respondent was travelling in the bus belonging to the appellant-Transport Corporation bearing Reg.No.TN-23-N-1499. At 11.15 p.m. on that day, while the bus was nearing Vaniyambadi M.C.Road, an

auto-rickshaw bearing Reg. No.TN-23-K-0725, which was driven by the second respondent herein and insured with the third respondent-Insurance Company, came from the opposite direction in a rash and negligent manner and dashed against the bus. Due to the said impact, the first respondent sustained grievous injuries. The first respondent filed a Claim Petition claiming a compensation of Rs.1,37,500/-. On considering the materials available on record, the Tribunal fixed the contributory negligence on the drivers of both the vehicles equally, and quantified the compensation at Rs.1,37,500/- with interest at the rate of 7.5% per annum from the date of petition and directed the appellant Transport Corporation and the Insurance Company to pay the compensation at 50% each. The Insurance Company was directed to pay the compensation to the claimant at the first instance and thereafter to recover the same from owner of the vehicle, on the ground of violation of policy conditions. Challenging the 50% liability fixed on the Transport Corporation as well as the quantum of compensation awarded by the Tribunal, the appellant Transport Corporation has preferred this appeal.

3.The learned counsel for the appellant/Transport Corporation has submitted that the Tribunal has erred in concluding that the driver of the appellant/Transport Corporation was also responsible for the accident. He also submitted that the compensation awarded by the Tribunal is excessive and hence the same has to be reduced.

4.There is no appearance on behalf of the second and third respondents. Even though this appeal has been filed in the year 2016, no steps have been taken by the appellant to serve papers to them, even at this length of time.

5.Heard the learned counsel appearing for the appellant and perused the materials available on record.

6.With regard to the aspect of negligence, P.W.1/claimant has deposed before the Tribunal that on 22.04.2004, he was travelling in the appellant Transport Corporation's bus and at that time, the driver of the auto-rickshaw in question, belonging to the second respondent came in a rash and negligent manner and dashed against the bus and due to the same, he sustained severe injuries. He has also stated in his evidence that there was negligence on the part of the driver of the auto-rickshaw in driving the vehicle. Taking note of Ex.P1/FIR, Ex.P3/MVI Report, Ex.R2/Rough sketch, Ex.R8/Judgment made in MCOP. No.143/2006 on the file of the Chief Judicial Magistrate, Thiruvallur, Ex.R10/Judgment of this Court in CMA No.9/2009 dated 15.09.2010, the Tribunal has fixed the contributory

negligence on the part of the drivers of both the vehicles i.e., auto-rickshaw and Transport Corporation Bus equally and ultimately, directed the Insurance Company and the Transport Corporation to pay the compensation at 50% each, of course granting liberty to the Insurance Company to recover the compensation from the owner of the vehicle after it has been deposited, since there was violation of policy conditions on the part of the owner of the auto-rickshaw. This Court is not inclined to interfere with the said findings on negligence and liability, as the Tribunal has rendered the findings on a thorough perusal of the oral and documentary evidence adduced by the parties.

7. With regard to the quantum of compensation, the Tribunal has relied upon the exhibits, evidence of witnesses, medical bills, treatment records, percentage of disability assessed by the Doctor and all other aspects in a proper perspective and has awarded the compensation under various heads to the claimant. Further, this Court is of the considered view that the amounts awarded towards various heads are reasonable and justifiable and hence the same are confirmed.

8. In the result, the appeal stands dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed. The appellant/Transport Corporation is directed to deposit their share of compensation 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 being made, the first respondent / claimant is permitted to withdraw the same on making proper application before the Tribunal.

Sd/-
Assistant Registrar

//True Copy//
Sub Assistant Registrar

gbi/km

To

1. The Subordinate Judge,
Motor Accidents Claims Tribunal,
Gudiyattam, Vellore District.

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

+lcc to Mr.S.Sairaman, Advocate SR.88115

C.M.A.No.1458 of 2016
and
C.M.P.No.11202 of 2016

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