

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.07.2019

CORAM

THE HON'BLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.2967 of 2012
and
M.P.No.1 of 2012

The Managing Director,
Tamilnadu State Transport Corporation Ltd.,
Villupuram Ltd.,
Villupuram District ...Appellant/ Respondent

Vs.

S.Santhanam ...Respondent/ Petitioner

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Order in M.C.O.P.No.83 of 2006 dated 26.09.2011 on the file of Motor Accident Claims Tribunal [Sub Court], Gingee

For Appellant : Mr.G.Palani

For Respondent:Mr.T.Dhanyakumar

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the judgment and decree dated 26.09.2011 passed by the Motor Accident Claims Tribunal, Gingee, in M.C.O.P.No.83 of 2006.

2.The case in brief is as follows:

On 31.10.2005 at about 5.45 p.m., the respondent/claimant was travelling in the front footboard of the appellant-bus bearing registration No.TN32 N 1555 from Valathy to Gingee. When the bus was nearing Neelampoondi, the driver of the bus drove the same in a rash and negligent manner and suddenly applied break, on account of which, the respondent/claimant fell down and his leg got crushed under the left tyre of the bus. Stating that the accident had occurred, due to the rash and negligent driving on the part of the driver of the bus, he filed a claim petition claiming a compensation of Rs.10,00,000/-. On consideration of the materials and evidence, the Tribunal has arrived at a conclusion that the accident was caused due to the negligent act on the part of both the respondent/claimant and the driver of the bus and accordingly, fixed the contributory

negligence at 25% on the respondent and 75% on the appellant transport Corporation and ultimately, awarded a total compensation of Rs.2,00,000/- with interest at 7.5%pa. from the date of petition.

3.Challenging the finding of the Tribunal relating to 75% contributory negligence fixed on the driver of the bus, the appellant transport corporation has preferred this appeal.

4.The learned counsel for the appellant transport Corporation contended that at the time of accident, the respondent/claimant was in a drunken mood and he himself fell down from the bus and thereby invited the accident and hence, the appellant is not liable to pay any compensation.

5.On the other hand, the learned counsel for the respondent/claimant submitted that after examining the oral and documentary evidence, the Tribunal has passed the impugned judgment on negligence and quantum of compensation, which is perfectly right and warrants no interference by this Court.

6.Heard both sides and perused the records.

7.P.W.1/respondent/claimant has stated in the claim petition as well as in his evidence that the accident had occurred, due to the rash and negligent driving of the driver of the bus belonging to the appellant Transport Corporation. The testimony of P.W.1 was corroborated by Ex.P1 First Information Report. Whereas, the driver of the bus, who was examined as R.W.1, has stated in his evidence that on the date of occurrence, the respondent/claimant was in a drunken mood and he himself fell down from the bus and received crush injury in his leg. Ex.P3 Accident Register issued by Gingee Government Hospital stated that the respondent/claimant was under the influence of alcohol at the time of accident. The Tribunal taking note of the oral and documentary evidence adduced by the parties, has rightly come to the conclusion that the accident was caused due to the negligent act on the part of both the respondent/claimant and the driver of the bus. However, the Tribunal has wrongly fixed the contributory negligence at 25% and 75% on them, which, in the opinion of this Court, has to be modified at 50% each, having regard to the facts and circumstances of the case. Accordingly, the finding of the Tribunal with regard to the ratio of contributory negligence is modified at 50% each, on the respondent/claimant as well as the driver of the bus. Consequently, the liability fixed on the appellant transport corporation is hereby reduced from 75% to 50%.

8.Since there is no dispute with regard to the quantum of compensation and the rate of interest awarded by the Tribunal, the same is hereby confirmed as such.

9.In the result, the Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

10.It is reported by the learned counsel on either side that the appellant has already deposited their contribution of award of Rs.1,50,000/- and the respondent/claimant has also withdrawn 50% of the deposited amount. In view of the aforesaid modification, the appellant transport corporation as well as the respondent/claimant are permitted to withdraw the balance amount lying in the deposit, on filing proper application.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

ssd/rk

To

1.The Judge,
Motor Accident Claims Tribunal [Sub Court],
Gingee.

2. The Section Officer, V.R.Section,
Madras High Court, Chennai 104

+lcc to Mr.G.Palani , Advocate SR.No. 62423

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A.SK(12/03/2020)

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