

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.03.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1975 of 2019

and

C.M.P.No.7021 of 2019

The Managing Director,
(Sakiespura Depot)
KSRTC Ltd., K.H.Road,
Bengaluru.

.... Appellant/Respondent

Vs.

Mr.R.Nagaraj Rao

.... Respondent/Petitioner

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 18.07.2018 made in M.C.O.P.No.317 of 2017 on the file of Motor Accident Claims Tribunal, Special Sub Court, Krishnagiri.

For Appellant : Mr.T.Thiyagarajan

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Transport Corporation challenging the award dated 18.07.2018 made in M.C.O.P.No.317 of 2017 on the file of Motor Accident Claims Tribunal, Special Sub Court, Krishnagiri.

2.The appellant/Transport Corporation is the respondent in M.C.O.P.No.317 of 2017 on the file of Motor Accident Claims Tribunal, Special Sub Court, Krishnagiri. The respondent filed the said claim petition claiming a sum of Rs.20,00,000/- as compensation for the injuries sustained by him in the accident that took place on 14.03.2017. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the bus belonging to the appellant/Transport Corporation and directed the appellant/Transport Corporation to pay a sum of Rs.4,10,000/- as compensation to the respondent. Against the said award dated 18.07.2018 made in M.C.O.P.No.317 of 2017, granting compensation to the respondent, the appellant/Transport Corporation has come out with the present appeal.

3.The learned counsel appearing for the appellant/Transport Corporation contended that the Tribunal erred in fixing negligence on the part of the driver of the bus belonging to the appellant/Transport Corporation and liability on the appellant. The Tribunal on erroneous ground rejected the evidence of RW1, driver of the bus. RW1 has categorically stated that due to one two wheeler suddenly coming in front of him, he turned the bus to avoid hitting the unknown two wheeler and dashed against the electric post. The accident did not occur due to negligence on the part of the driver of the bus. The Tribunal erred in fixing negligence relying on the FIR, but failed to note that RW1 was acquitted in criminal proceedings. In any event, the Tribunal erred in fixing notional income of the deceased at Rs.8,000/- per month in the absence of any acceptable evidence. The Medical Board without scrutinising the medical records of the respondent has assessed percentage of disability excessively and issued disability certificate. The total compensation awarded by the Tribunal under different heads are excessive and prayed for setting aside the award of the Tribunal.

4.Heard the learned counsel appearing for the appellant/Transport Corporation and perused all the materials available on record.

5.From the materials available on record, it is seen that the respondent has contended that due to rash and negligent driving by RW1, the driver of the bus, accident has occurred. The respondent examined himself as PW1 and deposed the manner of accident. FIR was registered against the RW1, driver of the bus. RW1 has deposed that due to unknown two wheeler suddenly crossed in front of the bus, he turned the bus in order to avoid hitting two wheeler and dashed against the divider. On the other hand, the appellant has stated that RW1 dashed against electric post in order to avoid hitting the two wheeler. The appellant has not let in any evidence to corroborate the evidence of RW1. In the absence of any evidence corroborating the evidence of RW1, the Tribunal rejected the evidence of RW1, considered the evidence of PW1 and Ex.P1/FIR held that the accident occurred due to rash and negligent driving by the driver of the bus. There is no error in the finding of the Tribunal warranting interference by this Court.

5a.The learned counsel appearing for the appellant contended that RW1 was acquitted in criminal proceedings. The appellant has not produced the judgment of the Criminal Court before the Tribunal. It was not known on what ground RW1 was acquitted. Even otherwise, the judgment of the Criminal Court is not binding on the Tribunal and the Tribunal has to consider the evidence on record to decide negligence on the part of the

driver of the offending vehicle. The Tribunal considering the evidence in entirety in proper perspective has held that the accident occurred only due to rash and negligent driving by the driver of the bus belonging to the appellant/Transport Corporation. There is no error in the said finding of the Tribunal warranting interference by this Court.

5b.As far as quantum of compensation is concerned, the respondent has contended that he was a vegetable vendor and was earning a sum of Rs.15,000/- per month. The respondent failed to substantiate his contention. In the absence of materials, the Tribunal has fixed notional income of the respondent at Rs.8,000/- per month. The accident has occurred in the year 2017. The monthly income fixed by the Tribunal is not excessive. Further, the contention of the learned counsel appearing for the appellant that the Medical Board without considering the medical records of the respondent, has assessed disability excessively, is not supported by any evidence or document. The appellant has not let in any evidence to disprove the percentage of disability fixed by the Medical Board. In view of the same, the Tribunal accepted the disability assessed by the Medical Board and granted compensation on percentage basis. The total compensation awarded by the Tribunal is not excessive warranting interference by this Court.

6. In the result, this Civil Miscellaneous Appeal is dismissed and the sum of Rs.4,10,000/- awarded by the Tribunal as compensation to the respondent/claimant, along with interest and costs is confirmed. The appellant/Transport Corporation is directed to deposit the award amount along with interest and costs, less the amount already deposited, if any, within a period of twelve weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.317 of 2017. On such deposit, the respondent is permitted to withdraw the entire amount awarded by the Tribunal along with interest and costs, less the amount if any, already withdrawn. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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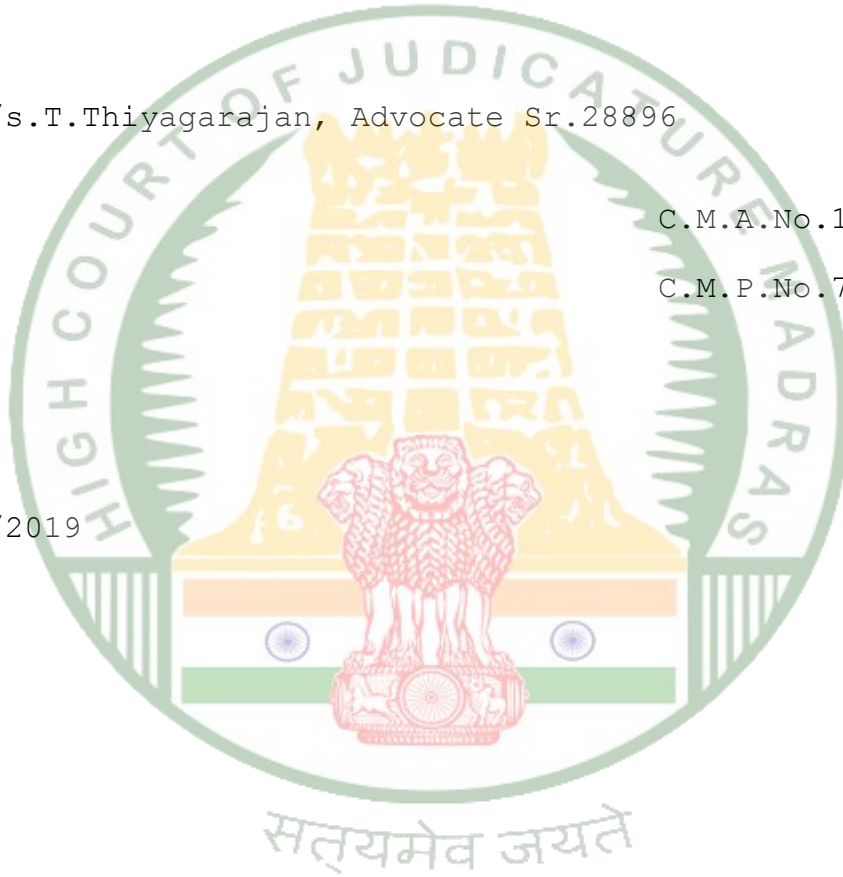
1.The Special Subordinate Judge
Motor Accident Claims Tribunal,
Krishnagiri.

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

+1cc to M/s.T.Thiyagarajan, Advocate Sr.28896

C.M.A.No.1975 of 2019
and
C.M.P.No.7021 of 2019

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