

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 05.10.2018

DELIVERED ON: 19.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.M.A.Nos.893 and 894 of 2016

and

CMP.Nos.7177 and 7178 of 2016

The Managing Director,
Tamil Nadu State Transport Corporation,
Kumbakonam,
Kumbakonam Town and Munsifi.

...Appellant
in both appeals

Vs

Ananthi

...Respondent No.1
in CMA.893/2016

Anitha

...Respondent No.1
in CMA.894/2016

Vinodhini

...Respondent No.2
in both appeals

The Branch Manager,
United India Insurance Company,
Having office at No.64, Armenian Street,
Parrys, Chennai.

...Respondent No.3
in both appeal

Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988, against the order dated 29.4.2015 passed in M.C.O.P.Nos.102 and 103 of 2013 on the file of the Motor Accident Claims Tribunal (Subordinate Judge), Tiruvarur.

For Appellants : Mr.D.Venkatachalam
in both appeals

For Respondents: Mr.S.Umapathy
for Respondent No.1 in
both appeals

M/s.R.Rathna Thara
for Respondent No.3 in
both appeals

COMMON JUDGMENT

Being aggrieved by the award dated 29.4.2015 passed in M.C.O.P.Nos.102 and 103 of 2013 passed by the Motor Accident Claims Tribunal (Subordinate Judge), Tiruvarur, the appellant has preferred these appeals.

2. The appellant is the 1st respondent; the 1st respondent herein are the claimants and respondent Nos.2 and 3 are respondent Nos.2 and 3 in the claim petitions.

3. Brief facts which led to the filing of the claim petitions is that on 23.6.2013, the claimants were travelling in the appellant's bus from Thiruthuraipoondi to Kanchipuram. On the way at Kandrakottai village, near check post on 24.6.2013 at 01.15 A.M., the appellant's driver drove the bus bearing registration No.TN-68 N 0344 rashly and negligently and dashed against the trailer lorry bearing registration No.TN-04 AB 8417 coming from the opposite direction which was driven by the second respondent's driver rashly and negligently. The lorry was over loaded by iron materials and the materials were extended over the right side body and both the drivers were liable for the accident. Immediately after accident, the claimants were admitted in Government Hospital, Cuddalore, where they have taken treatment as inpatient for 5 days and 1 month respectively. Thereafter, they have taken treatment at Government Hospital, Tiruvarur and subsequently at various hospitals. Regarding the accident, a criminal case in Crime No.229 of 2013 was registered by Puthupettai Police Station against the drivers of both drivers. Stating that the accident occurred due to rash and negligent driving of the drivers of both the bus and lorry, the 1st respondent/claimants have filed claim petitions claiming compensation of Rs.3,00,000/- and Rs.5,00,000/- respectively.

4. Resisting the claim petitions, the appellant Transport Corporation filed counter stating that on 24.6.2013 at about 1.15 A.M., the driver of the appellant's bus drove the same very slowly and while nearing Kandrakottai check post, a lorry bearing registration No.TN-04 AB 8417 with full of iron materials came on the opposite direction extending over the right side body despite cautioning the driver of the bus by switching the head light, the driver of the lorry came left side and caused the accident. Therefore, the driver of the bus was

not responsible for the accident and only the driver of the lorry alone responsible for the accident. Since the accident occurred due to rash and negligent driving of the driver of the lorry, the appellant is not liable to pay the compensation and prayed for dismissal of the claim petitions.

5. Before the Tribunal, M.C.O.P.Nos.102 and 103 of 2013 were tried separately. In M.C.O.P.No.102 of 2013, the claimant Anandhi examined herself as P.W.1 and Exs.P1 to P8 were marked. On the side of the appellant and the 3rd respondent insurance company R.W.1 and R.W.2 were examined and the investigation report was marked as Ex.R1. Like wise, in M.C.O.P.No.103 of 2013, the claimant Anitha examined herself as P.W.1 and Dr.Ramachandran was examined as P.W.2 and Exs.P1 to P13 were marked. On the side of the appellant and the 3rd respondent insurance company, R.W.1 and R.W.2 were marked and no document was marked.

6. Upon consideration of oral and documentary evidence, the Tribunal held that the accident occurred due to rash and negligent driving of the driver of the appellant bus and therefore, the appellant Transport Corporation is liable to pay the compensation. Considering the nature of injuries and the period of treatment undergone by the claimant Ananthi, the Tribunal awarded compensation of Rs.22,200/- payable with interest at the rate of 7.5% per annum from the date of claim petition till the date of realisation. Insofar as M.C.O.P.No.103 of 2013 is concerned, finding that the claimant Anitha sustained 30% disability, the Tribunal awarded compensation of Rs.1,05,200/- payable with interest at the rate of 7.5% per annum. Being aggrieved by the fastening of liability, the appellant Transport Corporation has filed these appeals.

7. I heard Mr.D.Venkatachalam, learned counsel for the appellant, Mr.S.Umapathy, the learned counsel for the 1st respondent/claimants and M/s.R.Rathna Thara, learned counsel for the 3rd respondent insurance company in both the appeals.

8. Assailing the fastening of liability on the appellant Transport Corporation, the learned counsel for the appellant submitted that the Tribunal failed to note that the FIR has been registered against the driver of the lorry. He would submit that the Tribunal failed to note that the driver of the lorry could have known that the protruding rods would hit the vehicles which crossing the lorry. Hence, the driver of the lorry could have taken precaution steps and covered the rods with red cover, so as to enable the vehicles coming in the opposite direction to know about the protruding rods. But the driver of the bus failed to do so, which is the cause for the accident. Apart

from this, at the time of accident, the lorry was overloaded with iron rods. But the Tribunal failed to consider the same and fixed the entire negligence on the driver of the appellant bus, which warrants interference.

9. By relying upon the award passed in M.C.O.P.No.276 of 2013 dated 7.9.2015 on the file of the Chief Judicial Magistrate, Nagapattinam filed by one Tamil Selvi, who travelled in the appellant bus and had sustained injury in the accident, the learned counsel submitted that the Tribunal had fixed the entire negligence against the driver of the lorry and dismissed the claim petition as against the appellant. The learned counsel further submitted that the said finding of the Tribunal was confirmed by this Court in C.M.A.No.748 of 2017 filed by the 3rd respondent insurance company. Therefore, the appellant is not liable to pay the compensation to the 1st respondent/claimants and prayed for setting aside the finding of the negligence fastened on the appellant.

10. The learned counsel for the 1st respondent/claimants submitted that in the accident the claimants have sustained grievous injuries and had taken treatment as inpatient for nearly 11 days and 1 month respectively and that the Tribunal ought to have awarded more amount. As far as fastening of liability is concerned, the learned counsel submitted that the claim petition filed by one Tamil Selvi before the Chief Judicial Magistrate Court, Nagapattinam, it was held that the accident occurred due to rash and negligent driving of the driver of the lorry and directed the insurer of the lorry i.e., the 3rd respondent to pay the compensation, which was affirmed by the High Court in C.M.A.No.748 of 2016.

11. On the other hand, the learned counsel for the 3rd respondent submitted that the Tribunal upon appreciation of oral and documentary evidence produced before it, rightly fastened the liability on the appellant and there is no need to interfere with the said finding.

12. I have considered the submissions made by the learned counsel on either side and also perused the materials available on record.

13. By the impugned award, the Tribunal after appreciation of oral and documentary evidence adduced by both sides held that the accident occurred due to rash and negligent driving of the driver of the appellant bus and therefore, the appellant being the owner of the offending bus, is liable to pay the compensation.

14. According to the appellant, the accident occurred due to the negligent driving of the driver of the 2nd respondent lorry and therefore, the 3rd respondent who is the insurer of the 2nd respondent is liable to pay compensation and the appellant is not liable to pay compensation. In support, the appellant has relied upon the decision of a Division Bench of this Court in C.M.A.No.748 of 2016 dated 23.3.2017 arising out of M.C.O.P.No.276 of 2013 on the file of the Chief Judicial Magistrate Court, Nagapattinam filed by one Tamil Selvi claiming compensation for the same accident.

15. On a perusal of the copy of award passed in M.C.O.P.No.276 of 2013, dated 7.9.2015 produced by the appellant, it is seen that the claimant therein also was travelling in the appellant bus at the time of accident and had sustained injuries. The Tribunal upon appreciation of oral and documentary evidence produced before it, held that the accident occurred due to rash and negligent driving of the driver of the lorry bearing registration No.TN-04 AB 8417. Since the lorry owned by the 2nd respondent was insured with the 3rd respondent, the Tribunal directed the 3rd respondent to pay the compensation. The said finding of the Tribunal was challenged by the 3rd respondent by filing appeal in C.M.A.No.748 of 2016 before this Court. By the judgment dated 23.03.2017, the Division Bench of this Court affirmed the award passed by the Tribunal. The relevant portion of the judgment reads thus:

"12. Appeal filed challenging the finding fixing negligence and quantum, is dismissed. However, there shall be no order as to costs."

16. Thus, it is clear that the accident in question occurred due to the rash and negligent driving of the driver of the lorry and not the driver of the appellant. This Court is bound by the judgment passed by the Division Bench of this Court in C.M.A.No.748 of 2016, dated 23.03.2017. In view of the above, this Court is of the view that the Tribunal erred in fastening the liability on the appellant. Following the decision of this Court in C.M.A.No.748 of 2016, this Court is of the considered view that the accident occurred due to rash and negligent driving of the lorry bearing registration No.TN-04 AB 8417 and the 3rd respondent being the insurer of the lorry is liable to pay the compensation to the claimants herein.

17. As far as quantum of the compensation awarded in these appeals are concerned, the appellant has not questioned the compensation awarded by the Tribunal by way of appeal. The appellant has not made any ground challenging the compensation awarded by the Tribunal. Further, the 3rd respondent insurance

company also challenged the quantum of compensation. Though the 1st respondent/claimants contended that the compensation awarded by the Tribunal is on the lower side, in the absence of any appeal by the claimants, the same cannot be decided in these appeals.

18. On a perusal of the award, it is seen that in M.C.O.P.No.102 of 2013, the Tribunal having found that the claimant had sustained only simple injury, awarded Rs.22,200/- under various heads. Considering the fact that in the accident, the claimant Ananthi sustained only simple injuries, the Tribunal was right in awarding total compensation of Rs.22,200/- and the same is confirmed.

19. Insofar as the compensation awarded in M.C.O.P.No.103 of 2013 is concerned, the Tribunal having found that the claimant Anitha sustained 30% partial and permanent disability, awarded total compensation of Rs.1,05,200/-. Since the said amount awarded by the Tribunal is reasonable, the same is confirmed.

20. In the result, the appeal filed challenging the finding fixing the negligence on the appellant by the Tribunal is set aside and the appeals filed by the appellant are allowed. Insofar as quantum of compensation awarded by the Tribunal in M.C.O.P.Nos.102 and 103 of 2013 is concerned, the same is confirmed and the 3rd respondent insurance company is liable to pay the compensation awarded by the Tribunal in M.C.O.P.Nos.102 and 103 of 2013 with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit within a period of eight weeks from the date of receipt of a copy of this judgment before the Tribunal. On such deposit, the claimants are permitted to withdraw the amount with accrued interest on filing proper application before the Tribunal. No costs. Consequently, connected miscellaneous petitions are closed.

vs

सत्यमेव जयते
Sd/-

Assistant Registrar(CS IV)

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Sub Assistant Registrar

To

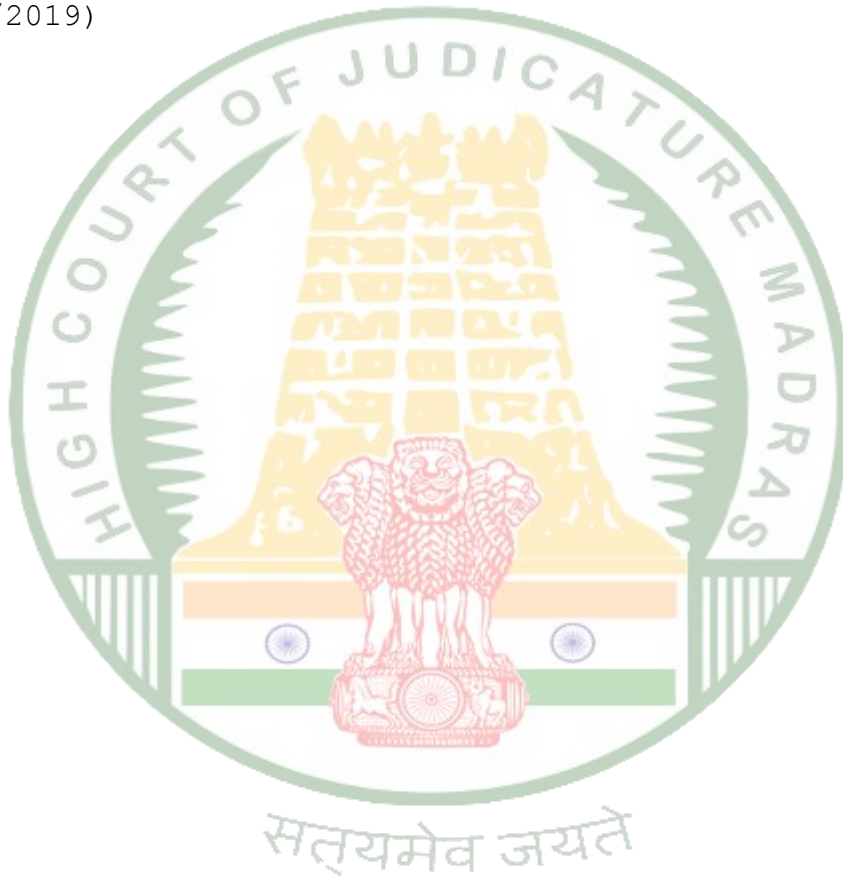
The Motor Accident Claims Tribunal,
Subordinate Judge,
Tiruvarur.

+1cc to Mr.S.Balu and Umapatty, Advocate,SR.No.14820

+1cc to Mr.D.Venkatachalam, Advocate,SR.No.15268

Judgment made in
C.M.A.Nos.893 and 894 of 2016 and
CMP.Nos.7177 and 7178 of 2016

kak (26/02/2019)



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