

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.07.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.No.2812 of 2019

and

C.M.P.No.1458 of 2019

The Managing Director,
KSRTC Limited, Chickballapur Division,
Chickballapur Post and Taluk,
Bengaluru, Karnataka State. Appellant

Vs

1.Chandra
2.The Managing Director,
Tamilnadu State Transport Corporation,
Salem - 636 007. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 20.06.2014 made in M.C.O.P.No.179 of 2011 on the file of the Motor Accident Claims Tribunal, III Additional District Judge at Kallakurichi.

For Appellant :Mr.T.Thiyagarajan

For R2 :Mr.D.Venkatachalam

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the 1st respondent/Transport Corporation, Managing Director, KSRTC Ltd, Bangalore, aggrieved against the liability fixed by the Tribunal.

2.The brief facts is as follows:

On 30.10.2010 at about 11.30 am when the petitioner was travelling in a TNSCTC bus bearing Reg.No.TN-29-N-1726 from

Chengam to Thiruvannamalai Road. At that time a Karnataka State Road Transport Corporation (KSRTC) bus bearing Reg.No.KA-40-F-136 coming in the opposite direction in a rash and negligent manner, dashed against the TNSTC bus and caused the accident. Thus the petitioner who was travelling in the TNSTC bus sustained grievous injuries fracture in left hand and all over the body. The petitioner claim a sum of Rs.10,00,000/- as compensation for the injuries sustained by her in the said accident.

3.The 1st respondent/Transport Corporation (KSRTC) denied the mode of accident as alleged in the claim petition. It is contended by the respondent that the negligence was fastened on the driver of the KSRTC bus. The respondent further contended that the TNSTC bus driver overtook a lorry which was coming in front of it and came to extreme right side of the road. On seeing the rash and negligent of the said driver, the KSRTC bus slowed down his speed to give place to the said bus to pass on. Suddenly the KSRTC bus driver heard a loud sound of tyre burst of the bus bearing No.TN-29-1726, as a result of which the said driver lost control over the bus and dashed to right side of KSRTC bus bearing Reg.No.KA-40-F-136. The 1st respondent/Transport Corporation (KSRTC) also denied the liability and negligence on the part of the said bus. Apart from that, the sum claimed by the claimants is also stated on excessive and without any proof.

4.The 2nd respondent/Transport Corporation (TNSTC) in the counter statement has also denied the mode of accident as stated by the claimant. Further, the sum claimed by the claimant also excessive in the absence of any proof. The contention raised by the 2nd respondent is that the driver of the said bus was proceeding from Chengam to Thiruvannamalai National Highways road was driven cautiously, by adhering to the rules and after boarding passengers at Eraiyur bus stop, the bus proceeded. At a distance of 400 yards, the driver of the bus, after seeing the KSRTC bus bearing Reg.No.KA-40-F-136 driven by its driver in a rash and negligent manner, without any control, stopped the bus, on the left side corner of the road, inspite of the same, the KSRTC bus dashed against the TNSTC bus. Hence, the accident occurred solely due to the rash and negligent driving of the driver of the KSRTC bus. Due to the said accident, three passengers got injuries and the driver of the said bus also died on the spot.

5.The Tribunal after analysing FIR, the evidence of PW1, Ex.P3/Motor Vehicles Inspectors Report and also the evidence of

respondent, has given a finding that the accident occurred due to rash and negligent manner on the part of the driver of the 1st respondent/Transport Corporation (KSRTC) bus. The Tribunal has also award a sum of Rs.66,000/- as compensation under the various heads as follows:

Head	Sum awarded by the Tribunal
Transport expenses	Rs.5,000/-
Extra nourishment	Rs.5,000/-
Pain & suffering	Rs.10,000/-
Medical bills	Rs.6,000/-
Disability	Rs.40,000/-
Total	Rs.66,000/-

Aggrieved against the liability the 1st respondent/Transport Corporation (KSRTC) has preferred this appeal.

6.In the grounds of appeal, the appellant has contended that the Tribunal has not considered the objection given to the police station and the counter statement filed by the appellant before the Tribunal. The Tribunal has failed to observe that the defacto complaint was not examined at all who lodged the complaint before the concerned police station which was marked as Ex.P1 before the Trial Court. The Tribunal failed to consider the statement of the defacto complainant, who had stated that he heard huge sound at the time of accident. The other grievance raised by the appellant is that the Tribunal failed to see that the driver of the TNSTC drove the vehicle in a very rash and negligent manner who was solely responsible for the negligence and the accident. Further, no eyewitness to speak about the occurrence nor any report filed by the investigation officer to prove the nature and cause of the accident. Regarding negligence aspect on the part of the two vehicles the Tribunal erred in fixing liability only on the appellant just by relying upon Ex.P1/FIR without testing the velocity of the document and also Ex.P2/wound certificate. It is further contended by the appellant that the Tribunal failed to note that the 2nd respondent's vehicle was plying on the middle of the road without following the rules. Hence, the appellant totally denied the liability fixed by the Tribunal.

7.Heard Mr.T.Thiyagarajan, learned counsel appearing for the appellant/Transport Corporation (KSRTC) and Mr.D.Venkatachalam, learned counsel appearing for the 2nd respondent/Transport Corporation (TNSTC) and perused all the materials available on record.

8. On perusal of the records, it is seen that the accident occurred by the involvement of two vehicles belonging to the TNSTC bus and KSRTC bus. The said two buses were moving in the opposite direction and only the injured person was examined before the Tribunal. On the side of the petitioner and on the side of the respondents two witnesses were examined the document Ex.P1/FIR in which the complaint has been preferred against the driver of the KSRTC bus. Ex.P3 is the Motor Vehicle Inspectors Report of the said vehicle. Hence, the evidence of the injured person is that, it is the driver of the 1st respondent vehicle bearing Reg.No.KA-40-F-136 driven by its driver in a rash and negligent manner and dashed against the TNSTC bus, in which she was travelling as passenger. In the cross examination also she denied that the accident occurred due to involvement of the 2nd respondent driver.

9. On the other hand the respondent side RW1 was examined he has deposed before the Tribunal that while he was driving the said bus on 30.10.2010 from Chengam to Thiruvannamalai road and at that time the vehicle which belonging to the 2nd respondent/Transport Corporation (TNSTC) and the driver of the said bus were coming from the opposite direction and he heard a loud sound of front tyre burst and the driver of the said bus lost control and he only caused the accident by hitting the back side of the driver RW1. Hence, the driver of the KSRTC also sustained injuries, the Tribunal based on the evidence placed by RW1 as well as the eyewitness who is the injured person/passenger at the time of accident and discussed elaborately and by considering the evidence of RW2 who has deposed that on the date of accident when the bus was proceeding towards Thiruvannamalai, unloaded the passengers at Eraiyur road bus stop and after loading the passengers moved slowly, at that time, the 1st respondent bus came in the opposite direction in a rash and negligent manner and dashed against front side of the 2nd respondent bus. In view of the said evidence, the Tribunal concluded that there could not be any rash and negligent driving immediately after dropping the passengers in the said bus stop. Hence, the liability has been fixed on the driver of the 1st respondent vehicle i.e. KSRTC bus but the Tribunal also discussed elaborately about the publication made in Tamil Nadu Daily regarding the said accident. On perusal of the documents, it is seen that the Motor Vehicles Inspector Report of the vehicle which belongs to KSRTC bus was alone filed. The evidence of RW1 that it is the negligent driving on the part of the driver of the TNSTC bus. There is also damages caused on both bus, except PW1 none of the passengers are any other eyewitness were examined to prove the negligence driving on the part of the driver of the KSRTC bus. Further, no investigation report also

filed against the involvement of two vehicles. The driver of the TNSTC bus also died on the spot. Hence this Court is of the opinion that the negligent aspect on the two buses has to be properly considered. In view of the evidence and documents placed before the Tribunal, this Court finds it proper to rely upon the judgment of this Court reported in "CDJ 2014 MHC 3705" in the case of "The Managing Director, Karnataka State Road Transport Corporation Limited Vs. Minor. Jagadeesan". In which the negligence for both the Transport Corporation was fixed at 50% each.

10. Hence in view of the above decision of this Court, the evidence and documents placed before the Tribunal, the liability has to be equally apportioned on both the drivers of the buses by fixing equal liability on both the drivers and sum awarded by the Tribunal has to be paid by both the respondents equally.

11. In the result

(i) the judgment and decree dated 20.06.2014 made in M.C.O.P.No.179 of 2011 is modified to the effect that both the respondents therein are equally liable to pay the compensation to the claimant. Accordingly the liability is fixed on both the respondents therein at 50% each.

(ii) Civil Miscellaneous Appeal is partly allowed No Costs. Consequently, connected Miscellaneous Petition is closed.

(iii) The appellant/Transport Corporation (KSRTC) and 2nd respondent/Transport Corporation (TNSTC) are directed to deposit the award amount determined by the Tribunal along with interest and costs, less the amount already deposited if any, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant/claimant is permitted to withdraw the award amount along with interest and costs, less the amount if any, already withdrawn.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

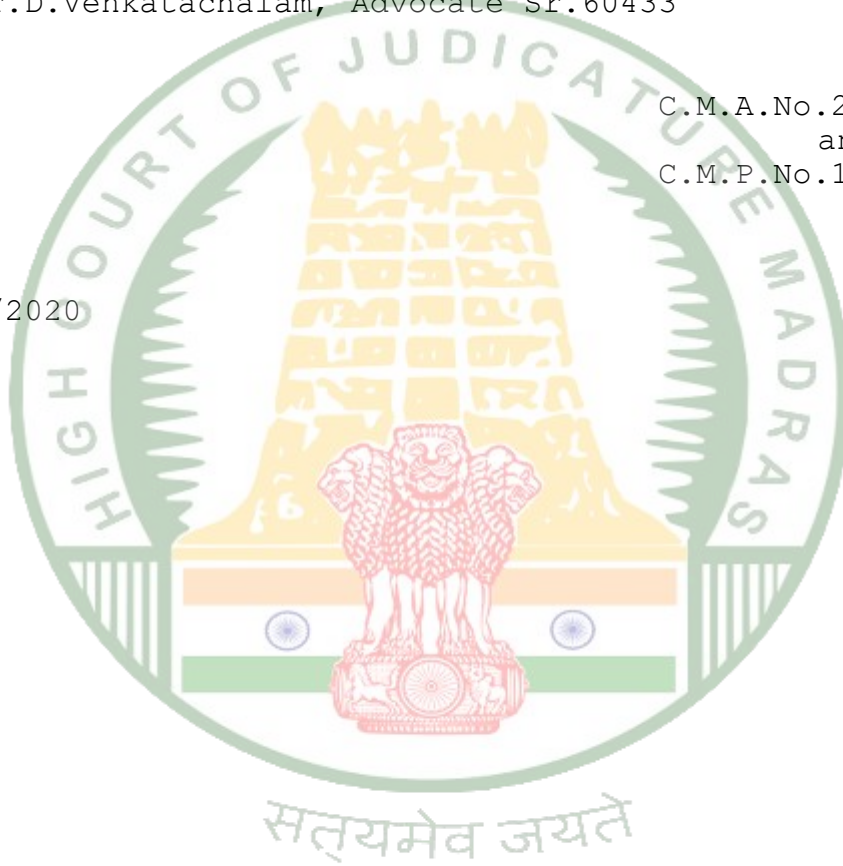
1.The III Additional District Judge,
Motor Accident Claims Tribunal,
Kallakurichi.

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

+1cc to M/s.T.Thiyagarajan, Advocate Sr.59867
+1cc to Mr.D.Venkatachalam, Advocate Sr.60433

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