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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.07.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.No.1984 of 2018

and

C.M.P.No.15422 of 2018

The Managing Director,
Tamilnadu State Transport Corporation,
(Kumbakonam Division - I) Ltd.,
Railway Station New Road,
Kumbakonam - 612 001.

.. Appellant/Respondent

Vs.

.. Respondent/Petitioner

S.Shanmugam

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 31.10.2017 in MCOP.No.4261 of 2014 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Cuddalore.

For Appellant : Mr.D.Venkatachalam

For Respondent : Mr.A.N.Viswanatha Rao

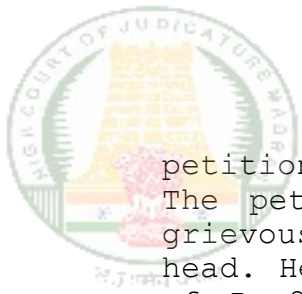
J U D G M E N T

This Civil Miscellaneous Appeal has been preferred against the judgment and decree dated 31.10.2017 in MCOP.No.4261 of 2014 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Cuddalore.

2.The appellant herein is the Managing Director, Respondent/Transport Corporation aggrieved against the liability has preferred this appeal.

3.The brief facts is as follows:

On 25.04.2014 at about 2.40 pm when the petition was riding his motorcycle bearing Reg.No.TN-31-AJ-9142 from south to north direction at his extreme left hand side of the Cuddalore to Vridhachalam road. At that time, T.N.S.T.C. Bus bearing Reg.No.TN-45-N-2774 came in the same direction at a very high speed in a rash and negligent manner and hit behind the



petitioner, who was riding motorcycle and caused the accident. The petitioner thrown out of his motorcycle and he sustained grievous injuries and multiple fractures all over the body and head. He was also given treatment and the petitioner claim a sum of Rs.25,00,000/- as compensation for a permanent disability, pain & suffering, shock and mental agony, loss of income, loss of earning power and capacity, loss of valuables, loss of motorcycle, loss of expectation of life and medical expenses.

4.The Tribunal after analyzing the evidence and also Ex.P1 / FIR has given a finding that the accident has occurred only due to the rash and negligence on the part of the driver of the appellant Corporation bus. Aggrieved against the said finding, the Transport Corporation has preferred this appeal and contended that the appellant bus was not involved in the said accident because the bus already reached Puducherry at 13.45 hrs. Hence, there was no such accident occurred as alleged by the claimant which is said to have taken place at 2.40 pm. Ex.R2 / trip sheet will prove the fact that the said bus reached Puducherry at 13.45 hrs. This aspect was not considered by the Tribunal. The Tribunal has also not considered the fact that the case was closed as undeducted based on the final report Ex.P3 and witness RW2 also examined before the Tribunal and this aspect was not considered. In spite of the trip sheet filed by the appellant and the evidence of RW2 which are very much proved the fact the appellant bus was not involved in the said accident, the Tribunal has rejected the evidence and fixed the liability as against the appellant. Hence prayed to set aside the judgment of the Tribunal.

5.Heard, Mr.D.Venkatachalam, learned counsel appearing for the appellant/Insurance Company and Mr.A.N.Viswanatha Rao learned counsel appearing for the respondent.

6.The appellant is very much aggrieved against the liability because when the case has been registered by the Kullanchavadi police station and after investigation report was filed. It is stated in this report that only during investigation they came to know that the said accident had occurred on 25.04.2014 at 14.45 hrs. But this fact was submitted only by the injured and not by any other witness. Though the persons have stated involvement of the bus, but none of them could furnish the registration number of the alleged bus. Hence, during the investigation they could not trace the bus as well as driver of the said bus. Therefore, the case was referred as "mistake of fact" and RC was also sent to the petitioner. It is vehemently argued by the appellant that Ex.R2 - trip sheet was filed before the Tribunal to prove the fact that the time and date mentioned by the claimant the said bus reached Puducherry and hence, there could not be any accident occurred. It is also



pointed out by the appellant that the accident on 25.04.2014 and the complaint was preferred on 27.04.2014 which prove the fact that the said lapse was only to make fortune out of misfortune. The interested person one Shanmugam, who is not a eyewitness has filed the false FIR against the appellant driver, so after thorough investigation the said FIR was closed and produced before the Tribunal.

7.It is seen from the records that RW1 the respondent driver was examined hence the evidence of RW1 was not considered by the Tribunal. RW2 one Krishnamoorthy who is the Special Sub Inspector has deposed before the Court that the case was registered in Crime No.122/2014. In the FIR, the place of accident has been stated as Cuddalore to Vridhachalam road near Thoppukollai bridge. Further, the said witness deposed that the witness Mani and Thambusamy were not available in the accident spot at the time of the accident and further he has not examined none of these persons. Hence his report was not accepted by the Tribunal. The Tribunal has not considered the evidence of RW1 and RW2 and also the documents Ex.R1 to Ex.R3 and further observed that the finding of the Criminal Court will not bind the Tribunal and the Tribunal has to decided the issue independently. The said involvement of the vehicle was considered by the Tribunal based on the evidence of injured eyewitness and given the said finding. Therefore, this Court is of the view that the finding of the Tribunal in fixing the liability and negligence on the part of the driver of the appellant Corporation bus and the involvement of the Transport Corporation bus at the said time as stated by the claimant is justifiable and proper as the same are based on the evidence and documents. Therefore, the finding of the tribunal does not require any intereference by this Court.

8. In the result, this Civil Miscellaneous Appeal is partly dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-VI)

//True copy//

Sub Assistant Registrar

mtl

To

1.The Special Subordinate Judge,
Motor Accidents Claims Tribunal
Cuddalore.



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

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C.M.A.No.1984 of 2018
and
C.M.P.No.15422 of 2018

MG (CO)
GMY (27/09/2019)