

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.4618 of 2019

and

C.M.P.No.26174 of 2019

The Managing Director
Tamil Nadu State Transport Corporation
Kumbakonam Limited
Periyamelaguparai
Trichy.

... Appellant /Respondent

Vs.

Periyasamy

.. Respondent/Claimant

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 09.01.2019 made in M.C.O.P.No.554 of 2016 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Perambalur.

For Appellant : Mr.D.Venkatachalam

For Respondent : Mr.T.Gopinath

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Transport Corporation against the award dated 09.01.2019 made in M.C.O.P.No.554 of 2016 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Perambalur.

2.The appellant/Transport Corporation is respondent in M.C.O.P.No.554 of 2016 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Perambalur. The respondent filed the said claim petition claiming a sum of

Rs.25,00,000/- as compensation for the injuries sustained by him in the accident that took place on 16.04.2015.

3. According to the respondent, on the date of accident i.e., on 16.04.2015 at about 16.00 hours, while he was riding in his Hero honda motor cycle on the left side of Trichy - Thanjavur road, the driver of the bus belonging to the appellant/Transport Corporation drove the same in a rash and negligent manner, dashed against the respondent and caused the accident. The respondent sustained multiple grievous injuries and therefore, filed the claim petition seeking compensation.

4. The appellant filed counter statement denying the averments made by the respondent and contended that the driver of the bus is not responsible for the accident. The case has been falsely registered against the driver of the appellant bus. The respondent was solely responsible for the accident. The respondent without noticing the bus coming behind him, suddenly turned his motorcycle to the right side of the road on seeing the dog. The claim petition is bad for non-joinder of the insurance company of the motorcycle driven by the respondent. Therefore, the appellant is not liable to pay any compensation to the respondent.

5. Before the Tribunal, the respondent examined himself as P.W.1 and one Dr.K.Jegatheesan was examined as P.W.2 and marked 28 documents as Exs.P1 to P28. On the side of the appellant, one R.Senthilvel, driver of the appellant bus was examined as R.W.1 and no documentary evidence was let in. The disability certificate issued by the Medical Board was marked as Ex.C1.

6. 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.15,31,500/- as compensation to the respondent.

7. Against the said award dated 09.01.2019 made in M.C.O.P.No.554 of 2016, granting compensation to the respondent, the appellant/Transport Corporation has come out with the present appeal challenging the negligence fixed on the part of the driver of the appellant bus and liability on the appellant.

8. Though the learned counsel appearing for the appellant/Transport Corporation has raised various grounds in the grounds of appeal with regard to quantum of compensation, when the matter is taken up for hearing, he has restricted his

arguments only with regard to negligence fixed on the part of the driver of the appellant bus.

9.The learned counsel appearing for the appellant/Transport Corporation contended that R.W.1, who is the driver of the bus, in his evidence, has deposed that despite giving horn, the respondent suddenly turned his motorcycle on the right side, which caused the accident. The Tribunal without considering the same, has erroneously fixed liability on the part of the driver of the bus and ought to have fixed contributory negligence on the part of the respondent and prayed for setting aside the award of the Tribunal.

10.Per contra, the learned counsel appearing for the respondent/claimant contended that the Tribunal considering the evidence of P.W.1 and Ex.P1/F.I.R., which is registered against the driver of the bus, has rightly fixed negligence on the part of the driver of the bus belonging to the appellant/Transport Corporation and prayed for dismissal of the appeal.

11.Heard the learned counsel appearing for the appellant/Transport Corporation as well as the respondent and perused all the materials available on record.

12.From the materials available on record, it is seen that the respondent examined himself as P.W.1 and deposed about the manner of accident. As per the evidence of P.W.1/respondent, while he was riding his motorcycle, the driver of the appellant bus drove the same in a rash and negligent manner from behind, hit the motorcycle and caused the accident. He has marked Ex.P1/FIR to show that a case has been registered against the driver of the appellant bus. The appellant has examined R.W.1/driver of the bus to prove that the accident has occurred due to negligence of the respondent. R.W.1 in his evidence has deposed that despite giving horn, slowing down the bus and applying break, the respondent dashed on the left side of the bus. No complaint was lodged by the appellant in this regard. R.W.1 in his cross-examination has deposed that he has seen the motor cycle at the distance of two feet only before the accident. In any event, had the driver of the appellant bus driven the same with caution, the accident would have been avoided. In the absence of any rebuttal evidence on the part of the appellant, the Tribunal considering the evidence of P.W.1 and Ex.P1-FIR, 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.

13.In the result, this Civil Miscellaneous Appeal is dismissed and the sum of Rs.15,31,500/- 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. On such deposit, the respondent/claimant 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-VIII)

//True Copy//

Sub Assistant Registrar

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To

1.The Chief Judicial Magistrate
(Motor Accident Claims Tribunal),
Perambalur.

+1cc to Mr.D.Venkatachalam, Advocate SR.102148

+1cc to Mr.T.Gobinath, Advocate SR.101938

C.M.A.No.4618 of 2019

and

C.M.P.No.26174 of 2019

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