

In the High Court of Judicature at Madras

Dated : 21.11.2019

Coram :

The Honourable Mr.Justice R.MAHADEVAN

Civil Miscellaneous Appeal No.1721 of 2017
and CMP.No.9332 of 2017

The Managing Director, Tamil Nadu
State Transport Corporation
(Villupuram Division I) Ltd.,
Villupuram. ...Appellant/2nd Respondent

Vs

1.Manikandan1st Respondent/Petitioner
2.A.Munusamy Mudaliar

3.The United India Insurance Company
Ltd., Chennai,
Villupuram Branch. ...Respondents/Respondents 1 & 3

APPEAL under Section 173 of the Motor Vehicles Act, 1988
against the award dated 31.8.2012 made in MCOP.No.256 of 2010 on
the file of the Motor Accidents Claims Tribunal (Principal
Subordinate Judge), Villupuram.

For Appellant : Mr.S.Sairaman
For Respondent-2: Mrs.R.Rathna Thara

JUDGMENT

The Transport Corporation is on appeal before this Court
challenging the award passed by the Motor Accidents Claims
Tribunal in a road accident causing grievous injuries to the
first respondent herein - claimant, aged 24 years.

2. The accident occurred on 30.11.2007 at 5 PM at
Kanchipuram Arakonam Road near Kooram Railway Gate. When the
first respondent herein - claimant was traveling as a passenger
in the private bus bearing Regn.No. AP-03-W-7575 belonging to
the second respondent herein, the bus bearing Regn.No.TN-32-N-
2034 belonging to the appellant - Transport Corporation, which
came from the opposite direction, was driven by its driver in a
rash and negligent manner and dashed against the private bus, in

which, the first respondent herein - claimant was traveling, due to which, the first respondent herein - claimant sustained grievous injuries in the left knee, right shoulder, chest, head, hip and all over the body. The first respondent herein - claimant was immediately taken to the Government Hospital at Kanchipuram and also taken treatment in the Government Hospital, Villupuram, as an inpatient for six months.

3. During the relevant point of time, the first respondent herein - claimant was hale and healthy and was working as a Sugarcane Maistry earning a sum of Rs.10,000/- per month. After the accident, he was not able to do any normal work. The second and third respondents herein are the owner and the insurer of the private bus bearing Regn.No. AP-03-W-7575 and the appellant - Transport Corporation is the owner of the bus bearing Regn.No.TN-32-N-2034. According to the first respondent herein - claimant, both the drivers of the respective buses were responsible for the accident and therefore they are liable to pay the compensation. Stating so, the first respondent herein - claimant filed the claim petition before the Tribunal seeking a compensation of Rs.5,00,000/- together with interest and costs.

4. Before the Tribunal, the second respondent herein was set ex parte. The claim petition was resisted by the appellant - Transport Corporation by filing a counter on the ground that the claim petition filed by the first respondent herein - claimant was bad, that it should be dismissed in limine, that the accident had occurred only due to the rash and negligent driving of the driver of the private bus belonging to the second respondent. It is also stated that the amount claimed in the claim petition was exorbitant.

5. The third respondent herein filed a counter affidavit that the private bus involved in the accident did not have valid insurance nor its driver was having a valid driving licence, that the age, income and avocation of the first respondent herein - claimant were denied and that the compensation amount claimed was excessive. The third respondent herein sought to dismiss the claim petition with costs.

6. The Tribunal framed two points for determination viz. (i) whether the accident was caused due to the rash and negligent driving by the respective drivers ? and (ii) whether the appellant - Transport Corporation and respondents 2 and 3 herein were liable to pay compensation ? and if so, to what extent ?

7. Before the Tribunal, the first respondent herein - claimant examined himself as PW1 apart from examining one Dr.Ravindher as PW2 and marked Ex.P1 - the First Information Report, Ex.P2 - Certificate of Opinion, Ex.P3 - the Insurance

Policy for the private bus, Ex.P4 - Driving Licence, Ex.P5 - the Vehicle Registration Certificate, Ex.P6 - the Driving Licence, Ex.P7 - the Permanent Disability Certificate and Ex.P8 - X-ray. The appellant / Transport Corporation examined the driving coach as RW1 and marked Ex.R1 and Ex.R2- the award and the decree passed in MCOP.No.181 of 2008.

8. The Tribunal considered Ex.P1 and Ex.P3 to Ex.P6 and came to the conclusion that the bus belonging to the second respondent herein and the bus belonging to the appellant - Transport Corporation collided with each other. The Tribunal also considered the evidence of RW1, examined Ex.R1 and Ex.R2 and found that both the drivers were responsible for causing the accident, as no sketch was filed. The Tribunal has fastened the liability on both the appellant - Transport Corporation as well as the third respondent herein - insurer of the private bus, as it was found that the insurance policy of the private bus was alive.

9. With regard to quantum, the Tribunal accepted the disability at 25% and arrived at the compensation of Rs.50,000/- towards this head. The Tribunal has further awarded a sum of Rs.12,000/- towards loss of income, Rs.15,000/- towards pain and suffering, Rs.10,000/- towards nutrition and Rs.10,000/- towards transportation and damages. In total, the Tribunal awarded a sum of Rs.97,000/- together with interest at the rate of 7.5% per annum and costs to be payable equally by both the appellant - Transport Corporation as well as the third respondent herein. Aggrieved by such award, the Transport Corporation is before this Court.

10. The learned counsel for the appellant - Transport Corporation has contended that the Tribunal has awarded the compensation without proper acceptable medical reports in support of the case of the first respondent herein - claimant; that the Tribunal has failed to consider the sole negligence on the part of the driver of the private bus, which was duly insured with the third respondent herein and that fixing contributory negligence equally on the part of the driver of the bus belonging to the appellant - Transport Corporation is not sustainable in the eye of law.

11. Per contra, the learned counsel for the third respondent herein - insurer of the private bus reiterated the contentions raised in the counter.

12. This Court has heard the learned counsel for the appellant - Transport Corporation and the learned counsel for the third respondent herein - insurer of the private bus. This Court has also carefully considered the contentions made by the learned counsel on either side.

13. It is not in dispute that due to the accident, both the drivers of the respective buses died on the spot. As rightly held by the Tribunal, no sketch had been filed with regard to the manner of the accident. It is also not in dispute that there was head-on-collision as seen in Ex.P1. The Tribunal is right in its conclusion that no contra evidence has been let in to disprove the same. The Tribunal is also right in its conclusion that neither the eyewitness to the accident nor any passengers let in any evidence to prove that the accident was caused due to rash and negligent driving by the driver of the private bus. To arrive at such a conclusion, the Tribunal has relied upon the judgment of the Punjab and Haryana High Court in the case of Dr.B.D.Bagri Vs Daulat Ram & Ors. [reported in 1998 (1) TAC 287]. There is nothing on record to reject the said finding. The finding rendered by the Tribunal cannot be brushed aside unless and until there is some contra material to doubt the same. Further, the compensation amounts awarded by the Tribunal under different heads are reasonable and hence the same are confirmed.

14. In the result, this Civil Miscellaneous Appeal is dismissed by confirming the award passed by the Tribunal. The appellant - Transport Corporation as well as the third respondent are directed to deposit their share of entire compensation amounts as ordered by the Tribunal together with interest and costs, less the amount if any already deposited, within three weeks from the date of receipt of a copy of this judgment.

15. It is seen from the notice paper that the first respondent herein - claimant died. Though the appeal is of the year 2017 and the claim petition is of the year 2010, no steps have been taken to bring his legal heirs on record. Therefore, on depositing the compensation amount by the appellant and the R-3, the legal heir(s) of the deceased first respondent herein (claimant) shall make proper application before the Tribunal for withdrawal of the same. Consequently, the connected CMP is also dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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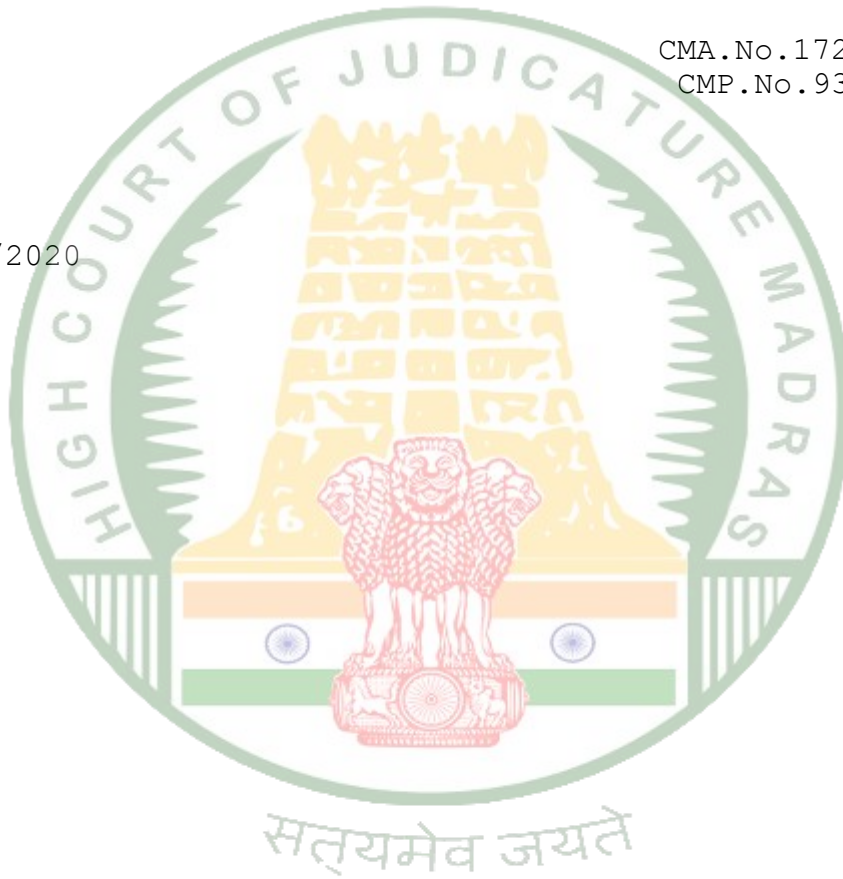
To

The Motor Accidents Claims Tribunal (Principal Subordinate Judge), Villupuram.

+lcc to Mrs.R.Rathnathara, Advocate Sr.97666

CMA.No.1721 of 2017 &
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