

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.01.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3019 of 2018

Suresh

.. Appellant / Petitioner

Vs.

1.Vellanki Narayana Rao

2.The Oriental Fire &
General Insurance Co. Ltd.,
719, Bunder Road, Labbipet,
Vijayawada -10,
Andhra Pradesh.

.. Respondents/ Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 110-D of Motor Vehicles Act, 1988, against the Judgment and Decree dated 23.04.1984 made in M.A.C.T.O.P.No.237 of 1982 on the file of the Motor Accidents Claims Tribunal, Chief Judge, Small Causes Court, Madras.

For Appellant: Ms.S.Ramya
for Mr.J.Mahalingam

For RR2 : Mr.M.Krishnamoorthy

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of the award dated 23.04.1984 made in M.C.O.P.No.237 of 1982 on the file of the Motor Accidents Claims Tribunal, Small Causes Court, Madras.

2.The appellant is claimant in M.C.O.P.No.237 of 1982 on the file of the Motor Accidents Claims Tribunal, Small Causes Court, Madras. He filed the said claim petition, claiming a sum of Rs.30,000/- as compensation for the injuries sustained by him in the accident that took place on 18.07.1981. The Tribunal, considering the pleadings, oral and documentary evidence,

dismissed the claim petition. Challenging the dismissal of the claim petition filed by him, the appellant has come out with the present appeal.

3. The learned counsel for the appellant contended that the appellant has proved that the accident occurred only due to rash and negligent driving by the driver of the tourist bus belonging to the first respondent. The Tribunal ought to have held that the accident occurred only due to rash and negligent driving by the driver of the tourist bus. The Tribunal erred in disbelieving the evidence of appellant as P.W.5 and erred in accepting the evidence of R.W.1. The Tribunal erred in relying on Ex.P1, the rough sketch and judgment of Criminal Court and contents of the alleged F.I.R. The Tribunal ought to have come to the independent conclusion based on the evidence let in before the Tribunal, instead of relying on the judgment of the Criminal Court.

4. Per contra, the learned counsel appearing for the second respondent/Insurance Company contended that from the evidence of R.W.1 and F.I.R, it is clear that the accident occurred only due to rash and negligent driving by the rider of the motorcycle. The Tribunal considering the evidence of R.W.1 and also acquittal by Criminal Court has rightly held that the appellant failed to prove that the accident occurred due to rash and negligent driving by the driver of the tourist bus and prayed for dismissal of the appeal.

5. Heard the learned counsel appearing for the appellant as well as the second respondent and perused all the materials available on record.

6. The contention of the learned counsel appearing for the appellant is that the appellant proved that the accident occurred only due to rash and negligent driving by the driver of the tourist bus. This contention is contrary to materials on record. In the present case, the driver of the tourist bus was examined as R.W.1 and he deposed that while the rider of the motor cycle was overtaking a PTC bus, he dashed against the tourist bus and thus the accident occurred. The above evidence is supported by statement in the F.I.R. From the award of the Tribunal, it is seen that one Kalaiselven, lodged F.I.R and has stated that the accident occurred while the rider of the motor cycle overtook a stationed PTC bus. The said Kalaiselvan was not examined. The Tribunal considering the materials on record has held that the appellant failed to prove that the accident only due to rash and negligent driving by the driver of the tourist bus and dismissed the claim petition. There is no error in the award of the Tribunal warranting interference by this Court.

7.In the result, this Civil Miscellaneous Appeal is dismissed and the award of the Tribunal dated 23.04.1984 made in M.A.C.T.O.P.No.237 of 1982 is confirmed. No costs.

gbi/krk

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

The Chief Judge,
The Motor Accidents Claims Tribunal,
Small Causes Court,
Madras.

+1cc to Mr. M.Krishnamoorthy,Advocate, SR.No.184/19

C.M.A.No.3019 of 2018

Kak(21/05/2019)