

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.02.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.1806 of 2009

Ambalavanan

... Appellant/Petitioner

Vs

The Managing Director,
Tamil Nadu State Transport Corporation
Ltd.,
Coimbatore Division II,
37, Mettupalayam Road,
Coimbatore - 641 043

... Respondent/Respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act against the Judgment and Decree of the award dated 30.09.2008 in M.C.O.P.No.730 of 2005 passed by the Motor Accident Claims Tribunal (Principal Subordinate Judge), Salem.

For Appellant : Mr. R.Nalliyappan

For Respondent : Mr.V.Udhayakumar

J U D G M E N T

The appellant herein, who is the claimant has preferred this Civil Miscellaneous Appeal against the Judgment and Decree dated 30.09.2008 in M.C.O.P.No.730 of 2005 passed by the Motor Accident Claims Tribunal (Principal Subordinate Judge), Salem.

2. The case of the appellant / claimant is that at about 15.00 hrs, on 09.11.2004, the appellant was proceeding in his T.V.S.50, bearing registration no. TN 27/P 5376 on the left side of Sooramangalam Main Road towards salem junction, at that time, near Jawahar mill bus stop, the respondent's bus bearing registration no.TN 33/N 1736 , driven by its driver in a rash and negligent manner and dashed behind the appellant. On account of which, the appellant sustained injuries and admitted in a private hospital at Salem. Immediately, no enquiry was conducted by the police. Due to the negligent driving of the driver of the bus, the accident had happened. Since the bus belongs to the respondent herein, the respondent is alone liable to pay compensation.

3. Per contra, the respondent denied the date, place, manner of the accident and the driving of the bus driver. The alleged place of occurrence is thickly populated labour area and if the accident is said to be true, the public would not have allowed the bus to proceed. Further, as per the allegations of the appellant, the accident had happened on 09.11.2004, but, the complaint was given only on 16.11.2004, which is a after thought. Also, the appellant had hit against a stone immersed in the stagnated rain water on the extreme left side of the road and fell down and sustained injuries. In order to avail unlawful gain, this case was lodged against the respondent and that there was no damage caused to the TVS 50 involved in the accident. Hence, the respondent is not liable to pay compensation as prayed by the appellant.

4. The Tribunal after considering the pleadings and counter pleadings had stated that the police authorities failed to prove that on the alleged date of accident, i.e., on 09.11.2004, the accused driver, namely, Munusamy drove the bus. Further, the bus was inspected by the Motor Vehicle inspecting authority after 19 days from the date of alleged accident. In view of the same, the Tribunal held that the negligence on the part of the driver of the bus was not proved. Also, the Tribunal by stating that when the respondent strongly denied the negligent act of the driver of the bus, the appellant ought to have taken steps to produce the trip sheet of the bus relating to the alleged date of accident happened on 09.11.2004, but the appellant has not taken any effective steps nor the appellant sufficiently explained the reason for delay in lodging the FIR against the driver of the bus and the reasons stated by the appellant for the delay in lodging FIR is also not acceptable and thereby dismissed the claim petition filed by the appellant. Aggrieved against the same, the appellant is before this Court.

5. The learned counsel for the appellant submitted that the Tribunal ought not to have dismissed the claim petition on the ground that there is a delay in filing the complaint and acquittal of bus driver in the criminal case. The Tribunal failed to consider that the appellant herein produced sufficient documents, viz., Ex.A.1 to Ex.A.6 to show that the appellant herein sustained injuries by the accident caused by the bus, however, the Tribunal had dismissed the claim on the only reason that the appellant herein has not produced the trip sheet of the bus, which has caused accident.

6. The learned counsel for the appellant contends that the Tribunal ought to have appreciated the accident register, Ex.A.3, which itself shows that the appellant herein sustained injuries through an accident caused by a bus and the respondent neither disputed Ex.A.3 nor disproved it before the trial court.

7. It is represented on behalf of the appellant that the motor vehicle act is a benevolent act and the claim made by the suffered party under the said act should not be treated like parties of a civil court to prove their case strictly. Hence the question of delay in lodging the complaint, acquittal of the bus driver in criminal case, non production of the trip-sheet of bus on the date of accident, will not be a reason to dismiss the claim petition. Further, if the Tribunal feels any doubt on the claim of the appellant, it would have directed the respondent to produce the trip sheet in respect of the bus, which has caused the accident. Therefore, the learned counsel for the appellant seeks to award the compensation.

8. The learned counsel for the appellant in support of his submission, relied on the following Judgments:-

(i) Judgment of Madurai Bench of this Court in G.Suresh V. Chellapandi and others in C.M.A.(MD) No.798 of 2009, wherein at Paragraph No.7(24) it is held as follows:

7.(24). In Geeta Devi V. Rajesh reported in 2011 ACJ 279, the Rajasthan High Court held as follows:

"It is, indeed, trite to state that while the finding of a civil court is binding on the criminal court, the finding of the criminal court could not and should not influence the decision of the Tribunal. The Tribunal is supposed to adjudicate the case on the basis of evidence produced before it and not on the basis of testimonies given before the criminal court."

(ii) The Judgment of Hon'ble Supreme Court reported in (2011) 4 Supreme Court Cases 693 [Ravi V. Badrinarayan and others] wherein at Paragraph No.20, it is observed as follows:-

'20. In the case in hand, the Claims Tribunal as well as the High Court committed grave error in not appreciating the mental agony through which Suresh was passing, whose son was severely injured. In the light of the aforesaid discussion, we are of the considered opinion that MACT as well as the High Court committed error in coming to the conclusion that lodging the FIR belatedly would result in dismissal of the claim petition.'

(iii) The Judgment of this Court in C.M.A.No.1781 of 2014 [The Managing Director, Tamilnadu State Transport Corporation Ltd., Vellore V. Santhi and others].

9. The learned counsel for the respondent would submit that there is no negligence found on the part of the bus driver and when the driver of the bus was acquitted in the criminal case, the burden of proof lies on the claimant, who ought to have

provided substantial and sufficient evidence to prove that there was negligence on the part of the bus driver and prayed for dismissal of the present appeal.

10. Heard the learned counsel on either side and perused the documents placed on record.

11. On going through the facts and circumstances of the case, this Court is of the view that when the appellant was admitted in hospital, he was produced with wound certificate and discharge summary, the same would prove that he sustained fracture all over his body. That being the case, there was a delay of 6 days in lodging the FIR and the same cannot be taken as a big heinous crime and the said delay is neither willful nor wanton and the averment that the said theory has been built up to claim compensation, cannot be accepted. From the above Judgments cited supra, it is clear that primarily, the patients' health has to be taken into account. The appellant after admitted at hospital on 09.11.2004, had lodged an FIR within six days and the same cannot be construed as a long delay. Also, he was discharged from the hospital on 06.12.2004. Therefore, the view taken by the court below is erroneous and had to be rejected.

12. The Tribunal had misconstrued itself stating that the concerned jurisdictional court has dismissed the criminal case against the driver of the bus and acquitted him, thereby proceeded to dismiss the claim petition filed by the appellant, but the concerned jurisdictional court had dismissed the criminal case only on the primary ground that prosecution failed to prove the negligent act of the driver of the bus and on that basis, the respondent, before the jurisdictional court contended that there was no accident happened and on that basis, the jurisdictional court observed that police authorities have failed to prove the alleged accident and since the appellant had not produced the trip sheet of the offending vehicle, dismissed the claim petition.

13. It is pertinent to mention here that the trip sheet will not be given to a common man, because it is an official document of transport Corporation and if the Tribunal thought that it is a vital document to arrive at a conclusion in the subject matter in issue, the Tribunal has a discretionary power and suomotu would have directed the Respondent / Transport Corporation to produce the trip sheet, but the Tribunal has not done so. The Tribunal has simply stated that the appellant has not taken any effective steps to produce the trip sheet and the delay in lodging FIR has not been properly explained and the reasons stated by the appellant for the delay is also not satisfactory, thereby proceeded to dismiss the claim petition, which needs interference in the eye of law.

14. That apart, there was no valid evidence to show that the claimant had fallen down hitting against a stone immersed in the stagnated rain water and this theory has not been explained on the side of the respondent and the same has to be rejected in toto and the present appeal has to be allowed.

15. From the perusal of the claim petition, it is seen that the appellant is a Asafoetida manufacturer, self employed person, consultant as well as part time accountant and was earning a sum of Rs.10,000/-. Therefore, he would have earned atleast Rs.9,000/- per month, hence the same is hereby fixed by this Court as monthly income to the appellant. Further, he was admitted in hospital on 09.11.2004 and discharged on 06.12.2004, therefore, definitely, there may not be any income for him during that period and hence the Loss of Earning during the period of treatment should be awarded and hence a sum of Rs.9,000/- is awarded towards Loss of Earning. Taking shelter of Ex.A.9, Disability Certificate, which shows the appellant had suffered 60% permanent disability, and hence 1% per disability is hereby awarded and therefore, a sum of Rs.60,000/- is awarded towards disability. Further, the appellant had suffered fracture all over his body, hence, he would have undergone severe pain and sufferings, hence a sum of Rs.20,000/- is awarded towards Pain and Sufferings and normally, a person would have accompanied him to carryout his day today activities, therefore, a sum of Rs.5,000/- is awarded towards Attendar Charges. Also, a sum of Rs.5,000/- is awarded towards Transportation Charges. A perusal of Ex.A.7 and Ex.A.8, medical bills and hospital bills shows that a sum of Rs.28,856.58 was spent towards medical expenses and the same is rounded off to Rs.28,860/-, hence a sum of Rs.28,860/- is awarded towards Medical expenses. For useful reference, the same is tabulated as follows:

Sl.No	Description	Amount
1	Loss of Earning during the treatment period	9,000/-
2	Disability	60,000/-
3	Pain and Sufferings	20,000/-
4	Attendant charges	5,000/-
5	Transportation charges	5,000/-
6	Medical Expenses	28,860/-
TOTAL		Rs.1,27,860/-

In total, a sum of Rs.1,27,860/- is awarded to the appellant. The respondent / Transport Corporation is directed to deposit the said amount to the credit of M.C.O.P.No.730 of 2005 with 6.5% interest per annum from the date of claim petition till the date of realisation within a period of four weeks from the date of receipt of a copy of this order. The appellant is entitled to withdraw the same by filing a formal petition before the court below.

16. With the above said observations and directions, the order passed in M.C.O.P.No.730 of 2005 by the Motor Accident Claims Tribunal (Principal Subordinate Judge), Salem is set aside and the present Civil Miscellaneous Appeal is allowed. No costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

ssd

To

1. The Motor Accident Claims Tribunal
(Principal Subordinate Judge),
Salem.

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

+1 CC to Mr.R. Nailliyappan, Advocate sr 9559.

+1 CC to Mr.V.Udhayakumar, Advocate sr 9519.

C.M.A.No.1806 of 2009

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