

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1453 of 2015

Tha Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Kancheepuram Division III,
Kancheepuram. .. Appellant/Respondent

Vs.

Sathishkumar ... Respondent/Claimant

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 27.03.2013 made in M.C.O.P.No.94 of 2010 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Chengalpattu.

For Appellant : Mr.K.J.Sivakumar

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company, challenging the award dated 27.03.2013 made in M.C.O.P.No.94 of 2010 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Chengalpattu.

2.The respondent is the claimant in M.C.O.P.No.94 of 2010 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Chengalpattu. He filed the said claim petition, claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident that took place on 13.12.2005.

3.According to the respondent, on the date of accident i.e., on 13.12.2005 at 02.15 p.m., while the respondent was travelling as a passenger in the Transport Corporation bus belonging to the appellant, on Chengalpattu to Tirukkazhukundram road, nearing Mailainatham village, the driver of the bus drove

the same in a rash and negligent manner and dashed against the lorry coming in opposite direction. Due to the said accident, the respondent sustained grievous injuries and thus the respondent/claimant filed claim petition claiming compensation against the appellant.

4.The appellant-Transport Corporation filed counter statement and denied the various averments made by the respondent in the claim petition. According to the appellant, while the bus was running on the Chengalpattu to Thirukkalikundram main road, when the bus was proceeding near Malainatham, a lorry came on its wrong side in a rash and negligent manner. The driver of the bus has swerved the bus to avoid hitting the lorry. Still the lorry came and dashed against the bus and caused the accident. The driver of the lorry alone was responsible for the accident. Hence, the appellant is not liable to pay any compensation to the respondent and prayed for dismissal of the claim petition.

5.Before the Tribunal, the respondent examined three witnesses as P.W.1 to P.W.3 and marked 20 documents as Exs.P1 to P20. The appellant examined one Chokanathan, Traffic Inspector in the appellant corporation, but has not filed any document.

6.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the bus belonging to the appellant-Transport Corporation and directed the appellant to pay a of Rs.11,40,000/- as compensation to the respondent.

7.Against the said award dated 27.03.2013 made in M.C.O.P. No. 94 of 2010, the appellant-Transport Corporation has come out with the present appeal.

8.The learned counsel for the appellant contended that the Tribunal fixed the negligence on the part of the driver of the bus belonging to the appellant without there being any evidence produced by the respondent but only based on the First Information Report and Criminal Proceedings. The Tribunal ought to have seen that no independent eye witness was examined except the respondent. The Tribunal failed to see that two heavy vehicles were involved in the accident and it was head on collision. The respondent failed to implead the owner and insurer of the lorry. The Tribunal ought to have fixed contributory negligence and composite negligence on the part of both the drivers. The Tribunal ought to have fixed the notional income of the respondent at Rs.3,000/- instead of fixing

Rs.5,000/-. The total compensation awarded by the Tribunal is excessive and prayed for setting aside the award of the Tribunal.

9. Heard the learned counsel appearing for the appellant/Transport Corporation and perused the entire materials on record.

10. From the materials on record, it is seen that two heavy vehicles were involved in the accident. According to the respondent, the accident occurred only due to the rash and negligent driving by the driver of the bus belonging to the appellant. On the other hand, it is the contention of the appellant that the driver of the other vehicle is responsible for the accident. To substantiate the said contention, the respondent examined himself as P.W.1 and marked FIR as Ex.P1, which was registered against the driver of the bus. The appellant examined only Traffic Inspector as R.W.1 and has not examined the driver of the bus or any eyewitness to prove that the accident occurred only due to the rash and negligent driving by the driver of the lorry. The appellant has not filed any objections for the FIR being registered against the driver of the bus and has not filed any complaint against the driver of the lorry. The Tribunal considering the above materials has fixed the negligence on the part of the driver of the bus belonging to the appellant and liability on the appellant. The Tribunal has given valid reason for fixing the negligence on the part of the driver of the bus belonging to the appellant, which does not warrant interference by this Court.

11. As far as quantum of compensation is concerned, the Tribunal has elaborately considered the evidence and documents marked by the respondent with regard to the nature of injuries and treatment taken by the respondent and accepted the disability certificate issued by P.W.2/Doctor. From the materials on record, it is seen that due to the injuries, the left leg of the respondent was amputated, below knee. The respondent was a final year engineering student. Considering the above materials, the Tribunal has fixed the notional income at Rs.5,000/- per month and awarded compensation towards disability by applying the multiplier method. The respondent was aged 22 years at the time of the accident and hence, the correct multiplier to be adopted is 17, but the Tribunal has applied the multiplier 18, which is not correct. The accident is of the year 2010 and the respondent being a final year engineering student, the notional income fixed by the Tribunal at Rs.5,000/- is very meagre. In view of the same, the multiplier 18 applied by the Tribunal is not interfered with.

12.In the result, this Civil Miscellaneous Appeal is dismissed and sum of Rs.11,40,000/- awarded by the Tribunal as compensation to the respondent/claimant, along with interest and costs is confirmed. The appellant is directed to deposit the award amount, along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.94 of 2010 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Chengalpattu. On such deposit, the respondent/ claimant is permitted to withdraw the award amount, along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. No costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

vkr
To

- 1.The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Chengalpattu.
- 2.The Section Officer,
VR Section,
High Court,
Madras.

C.M.A.No.1453 of 2015

rsv(co)
aa18/08/2020

सत्यमेव जयते

WEB COPY