

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.02.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.2326 of 2011

Velan

.. Appellant/Petitioner

Vs.

The Manager,
Tamilnadu Transport Corporation,
Kancheepuram.

.. Respondent/Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the impugned award in M.C.O.P.No.625 of 2009 dated 29.04.2002 on the file of the Motor Accidents Claims Tribunal/subordinate Judge, Tiruvallore.

For Appellant : Mr.R. Srinivas

For Respondent : Mr.C.S.K. Sathish

JUDGMENT

The Civil Miscellaneous Appeal is filed to set aside the impugned award made in M.C.O.P.No.625 of 2009 dated 29.04.2002 on the file of the Motor Accidents Claims Tribunal/subordinate Judge, Tiruvallore.

2.The case of the claimant/appellant is that on 27.12.1998, when he was travelling in Transport Corporation bus bearing Registration No.TN-21-0421 from Sripeumandur to Thandalam, due to the negligent driving by the driver of the bus, the appellant fell down from the bus. Due to the impact the he sustained injuries in his left leg. Hence, he filed a claim petition before the Tribunal against the respondent seeking Rs.1,50,000/- as compensation.

3.The Tribunal after analyzing the materials available on record awarded Rs.25,000/- as compensation.

4. Before the Tribunal, on the side of the appellant two witnesses were examined viz., P.W.1 and P.W.2 and Exs.P.1 to P.3 were marked. On the side of the respondent two witnesses were examined viz., R.W.1 and R.W.2 and they have not let in any documents.

5. Aggrieved over the award passed by the Tribunal, the appellant has come up with this present appeal.

6. The learned counsel for the appellant submitted that due to the accident the appellant sustained injuries in his left leg. He would further contend that the Tribunal erred in awarding only Rs.25,000/- towards no fault liability. Hence, prays to enhance the award amount.

7. The learned Counsel for the second respondent would contend that the appellant was under the influence of alcohol and he is not entitled for any compensation and prays for dismissal of this appeal.

8. Heard the learned counsel for the appellant and the respondent and perused the materials available on record.

9. With regard to negligence aspect, the learned Judge had raised the question, Whether the negligence on the part of the driver of the bus is the cause for the accident or not? and discussed the said aspect elaborately. P.W.1/appellant deposed before the Tribunal, that the accident occurred due to the negligence on the part of the driver of the bus. Furthermore, it is seen from the impugned award that approximately 150 passengers travelled in the said bus. If the accident would have taken place on the negligent driving of the driver of the bus, the other passengers who travelled in the bus would also met with the accident. But, none of them have injured. Another vital aspect to the said issue is that whether the passenger/appellant was standing or sitting in the bus, which was not clear from the evidence of the conductor and driver of the bus as well as from the deposition of the appellant. From the medical records of the appellant i.e Ex.P.2 it wherein it has been stated that the appellant/claimant was under the influence of alcohol. Thus apart, it is the bounded duty of the conductor of the bus to alight the passengers, who are under the influence of alcohol, but, he has not done it properly. Hence, based on the available witnesses and evidence and also considering the manner of the accident, the Tribunal arrived at a conclusion the negligence exists on the part of the appellant as well as the respondent. The findings of the Tribunal are very persuasive and cannot be brushed aside easily. Hence, this Court is not inclined to interfere with the same and the same is confirmed as such.

10.Challenging the aspect of compensation, the Tribunal arrived at a conclusion that, however the appellant sustained injuries and P.W.2/Dr.Dr.J.R.Thiyagarajan assessed the injured and issued Ex.P.3/Disability certificate which shows that the appellant sustained 40% disability. Therefore, the Tribunal has awarded Rs.25,000/- as compensation with 9% interest as compensation according to "no fault liability". Therefore, this Court is of the opinion that the findings rendered by the Tribunal with regard to quantum cannot be termed as perverse and the same is confirmed as such.

11.In the result this appeal is dismissed and the award passed by the Tribunal in M.C.O.P.No.625 of 2009 dated 29.04.2002 on the file of the Motor Accidents Claims Tribunal/subordinate Judge, Tiruvallore is hereby confirmed. The respondent/Transport Corporation is directed to deposit the amount awarded by the Tribunal, within a period of 8 weeks from the date of receipt of a copy of this Judgment. On such deposit being made the appellant/claimant is permitted to withdraw the award amount along with interest and costs, less the amount already withdrawn. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

smn

To

1.the Motor Accidents Claims Tribunal/subordinate Judge,
Tiruvallore.

2.The Section Officer, V.R Section,High Court, Madras.

+1 cc to M/s.R.Srinivas, Advocate Sr.No. 14816

+1 cc to M/s.C.S.K.Sathish, Advocate Sr.No. 15393

C.M.A.No.2326 of 2011

MP (CO)
RMP (18/01/2021)