

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No.1917 of 2018
and
C.M.P.No.14771 of 2018

The Managing Director,
Tamil Nadu State Transport
Corporation Limited,
Coimbatore Division -1,
37, Mettupalayam Road,
Coimbatore.

...Appellant/2nd Respondent

Vs.

1.Seshathri ...Ist Respondent/Petitioner
2.Sivasami ...2nd Respondent/Ist Respondent
3.Srinivasan
4.General Insurance Company Ltd.,
Meapilar myitcitym,
Trichy Road, Coimbatore. ...3 and 4th Respondents/
3 & 4th Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988, against the judgment and decree dated 11.06.2015 made in M.C.O.P.No.1339 of 2009 on the file of the Motor Accident Claims Tribunal, Additional Subordinate Judge, Tiruppur.

For Appellant : Mr.K.J.Sivakumar

For Respondent : Ma.P.Thangavel
[For R1]

J U D G M E N T

The Civil Miscellaneous Appeal is filed against the judgment and decree dated 11.06.2015 made in M.C.O.P.No.1339 of 2009 on the file of Motor Accident Claims Tribunal, Additional Subordinate Judge, Tiruppur.

2. The learned counsel appearing on behalf of the appellant/Transport Corporation set out the grounds for appeal

by stating that the Trial Court has not considered the evidence of PW1, which has not been corroborated with the other independent witnesses.

3. The accident occurred on account of the rash and negligent act of the two wheeler bearing Reg.No.TN 42 A 4298, who came in the same direction and dashed against the rear side of the bus. The Trial Court has failed to consider that the First Information Report (FIR) itself was registered against the rider of the two wheeler and not against the Bus Driver. The Trial Court has failed to consider the evidence of RW1, who is none other than the Driver of the Transport Corporation Bus and the disability of 30% accepted by the Tribunal is excessive and for all these reasons, the award is liable to be scrapped.

4. The accident occurred on 28.06.2009 at about 5.30 p.m., Near Bridge, Chinnakkarai Bus Stop, Palladam to Tiruppur Road. Palladam Police Station registered a case in Crime No.882/2009 U/s.279, 337 IPC. The claimant was riding the two wheeler and sustained grievous injuries. The Claim Petition was filed, seeking the compensation of a sum of Rs.6,00,000/-. The Tribunal considered the issues and with reference to the negligence, the Motor Accident Claims Tribunal arrived a conclusion that the Driver of the Bus committed an act of negligence. As per the FIR, Ex.A1, the Driver of the Transport Corporation Bus has committed negligence by driving the Vehicle in a careless manner. When the FIR reveals that the Driver of the Bus committed the act of negligence, the evidence of the Driver of the Bus, which is an interested witness, cannot be considered against the claimant and accordingly, the Tribunal arrived a conclusion that the Driver of the Transport Corporation Bus had committed an act of negligence.

5. In the absence of any evidence to rebut the contentions in the FIR, there must be same face of evidence.

6. In the present case on hand, the First Information Report (FIR) as well as the evidence submitted by the claimants, the Tribunal held that the Driver of the Bus has committed an act of negligence and to repudiate the same, the Transport Corporation has not produced any document or evidence except the deposition of the Driver, which is an interested witness. Therefore, this Court do not find any perversity in respect of the findings arrived with reference to the act of negligence.

7. As far as the quantum of compensation is concerned, the Partial permanent disability of 30% was assessed as per the medical records and Doctor's Certificate. Partial permanent disability was arrived, based on the medical records and therefore, this Court do not find any infirmity or perversity

with reference to the quantum of compensation calculated by the Motor Accident Claims Tribunal. Thus, the present appeal is not a fit case for considering the grounds and consequently, the judgment and decree passed by the Motor Accident Claims Tribunal in M.C.O.P.No.1339 of 2009 stands confirmed. Consequently, C.M.A.No.1917 of 2018 is dismissed.

8. The appellant / Tamil Nadu State Transport Corporation is directed to deposit the entire award amount with accrued interest, within a period of twelve weeks from the date of receipt of a copy of this judgment, if not already deposited and on such deposit, the respondents/claimants are permitted to withdraw the entire award amount with accrued interest by filing an appropriate application and the payments are to be made through RTGS.

9. No costs. Connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

Kak
To

The Motor Accident Claims Tribunal,
Additional Subordinate Judge,
Tiruppur.

C.M.A.No.1917 of 2018

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