

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.02.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.2929 of 2013

N.Kumar

... Appellant/ Claimant

Vs

The Managing Director,
Tamilnadu State Express Transport
Corporation Ltd.,
Pallavan House,
Chennai - 600 002

... Respondent/ Petitioner

Prayer:

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree made in M.C.O.P. No.317 of 2009 on the file of Motor Accidents Claims Tribunal (Sub Court) Vellore dated 16.07.2013.

For Appellant : Mr. C.Prabakaran

For Respondent : Mr.K.Kathiresan

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 made in M.C.O.P.No.317 of 2009 on the file of Motor Accidents Claims Tribunal (Sub Court) Vellore dated 16.07.2013

2. The case of the appellant / claimant is that on 10.08.2009 at about 7.00 p.m., when he was trying to cross the Chennai-Bangalore National Highways road near Pogai Bus stop from South to North in order to proceed to Vellore, along with one Priya, at that time, the passenger bus belonging to the respondent bearing reg.no.TN-01.N.7119 driven by its driver in a rash and negligent manner, dashed against the appellant, due to which, the appellant sustained grievous and bleeding injuries all over the body,

i.e., on his front head and right leg knee. Thereafter, the appellant was immediately, shifted to Government Medical College and Hospital, Vellore for treatment and hospitalised. The Virinchipuram Police has registered a case in Crime No.262 of 2009 under Sections 279 and 337 of IPC. Further, the appellant had worked as Coolie and was earning a sum of Rs.6,000/- per month and spent the same for the welfare of the family, hence seeks a sum of Rs.3,00,000/- as compensation.

3. Per contra, the respondent has filed a counter denying all the averments stated by the appellant. When the appellant himself admitted that there is no permanent disability or loss of earning power, the entire claim is baseless. Further, the bus owned by the respondent was driven slowly and cautiously from west to east on the left side of road on Madras Bangalore High ways near Poigai Village, a lorry had over taken the bus. At that time, the appellant suddenly crossed the road from south to north and he ran crossing the road and came into contact with the bus on its right side corner on the front and fell down. Therefore, the negligence is on the part of the appellant, therefore, the respondent is not liable to pay any compensation to the appellant.

4. Upon considering the pleadings, counter averments, witnesses and evidences, the Tribunal had awarded a sum of Rs.15,000/- to the appellant. Being not satisfied with the said compensation, the appellant has come up before this Court.

5. Before the Tribunal, the appellant himself was examined as P.W.1 and Ex.P.1, FIR was marked to prove the cause of accident. Ex.P.2, is the Accident Register, which is marked to show the treatment for the injuries sustained by the appellant due to the accident. Since the charge sheet has not been filed within the time frame by the Virinjipuram Police Authorities, the case was closed and the said order was marked as Ex.P.3. The Traffic Inspector had given a certificate stating that valid permit was in existence to the vehicle, which was involved in the accident and the same was marked as Ex.P.4. The driving license of the driver, who had driven the vehicle, which met with an accident was marked as Ex.P.5 and Ex.P.6 is the disability certificate given by the Doctor.

6. From the perusal of the claim petition as well as the counter petition, it is seen that the appellant had averred that due to the rash driving on the part of the driver of the respondent, the accident had happened,

whereas, in the counter petition, the respondent had stated that due to the negligence act of the appellant, the accident had taken place. At the same time, the respondent has not filed any documents to disprove the averment of the appellant and on perusal of the documents filed before the court below, it could be seen that charge sheet has not been filed. Hence based on the FIR, Ex.P.1 and the evidence of P.W.1, the court below has rightly held that the accident had happened only due to the rash and negligent driving of the driver of the respondent.

7. That apart, the appellant had submitted in his claim petition that due to the accident, he has suffered multiple grievous injuries and thereby he had filed claim petition seeking compensation of Rs.3,00,000/-. The Doctor, viz., P.W.2, who had examined the appellant had given evidence stating that on 24.01.2013, one Kumar, had come for treatment and due to the accident, there was a fracture in the left hand shoulder and his upper jaw teeth had teared, he had taken treatment at Vellore Medical College and Hospital. His right leg sustained grievous injuries, hence he averred that he had fixed disability at 40% and had given Ex.P.6 disability certificate.

8. As per Ex.P.6, disability certificate, the Doctor had averred that on 24.01.2013, he had examined one Kumar and given the said certificate, but the date of occurrence was on 10.08.2009, only on 24.01.2013, the disability certificate was given to the appellant, however, in Ex.P.2, Accident Register, there was no finding that the appellant had sustained fracture and his teeth had broken. Further, in Ex.P.6, disability certificate, the name of the candidate is mentioned as 'Kumar', but neither his father's name nor his address have been mentioned, the same creates doubt in the minds of this Court.

9. Though the appellant through Ex.P.2, Accident Register, had given evidence regarding the nature of injuries sustained on account of accident, he has not produced any proof to substantiate the same. In the absence of any evidence to show that the appellant had sustained multiple grievous injuries and fracture in the left hand shoulder, 40% disability assessed by the Doctor, cannot be accepted.

10. Moreover, as per Ex.P.2, Accident register, while considering the nature of injuries sustained by the appellant, it is clear that the appellant had not suffered grievous injuries. That apart, there is no evidence to show as to when the appellant had discharged from the

hospital and since there is no proper medical records to prove that the appellant had sustained grievous injuries, the court below on analysing various evidences, had awarded a sum of Rs.15,000/- with 7.5% Interest, which this Court, feels that the same is appropriate and thereby no interference is needed in this Appeal.

Accordingly, the Civil Miscellaneous Appeal is dismissed and Judgment and Decree made in M.C.O.P. No.317 of 2009 on the file of Motor Accidents Claims Tribunal (Sub Court) Vellore dated 16.07.2013 is confirmed. No costs.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

ssd
To

1.The Motor Accidents Claims Tribunal
(Sub Court) Vellore

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

+lcc to Mr.C.Prabhakaran , Advocate SR.No. 9390

+lcc to Mr.K.Kathiresan , Advocate SR.No. 9113

C.M.A.No.2929 of 2013

A.SK(24/09/2020)

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