

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3040 of 2013

Elayaraja

... Appellant/Claimant

Vs.

Tamil Nadu Transport Corporation
Tiruchirapalli
Rep. by its Managing Director
Post Box No.120
Tiruchirapalli - 620 001.

... Respondent/Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 18.12.2012 made in M.C.O.P.No.18 of 2009 on the file of Motor Accident Claims Tribunal, Sub Court, Attur.

For Appellant : Ms.D.Sathya for
M/s.Zeenath Begam

For Respondent : Mr.D.Venkatachalam

J U D G M E N T

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 18.12.2012 made in M.C.O.P.No.18 of 2009 on the file of Motor Accident Claims Tribunal, Sub Court, Attur.

2.The appellant is claimant in M.C.O.P.No.18 of 2009 on the file of Motor Accident Claims Tribunal, Sub Court, Attur. He filed the said claim petition claiming a sum of Rs.1,53,955/- as compensation for the injuries sustained by him in the accident that took place on 11.08.2007.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver cum owner of the Tata Ace, the appellant herein dismissed the claim petition as against the respondent.

4.Challenging the award dismissing the claim petition as against the respondent, the appellant has come out with the present appeal.

5.The learned counsel appearing for the appellant contended that the appellant has proved by oral and documentary evidence that the accident has occurred only due to rash and negligent driving by the driver of the bus/RW1. The Tribunal failed to consider Ex.P2/Magazar which shows that RW1 was driving his bus on the wrong side of the road. A criminal case in C.C.No.472 of 2007 is pending and the contention of the RW1 that the appellant paid fine is false. The Tribunal erred in shifting the burden on the appellant to prove that he did not pay fine while the respondent alleged that the appellant paid fine. The Tribunal erred in holding that the accident has occurred due to negligent on the part of the appellant, on the ground that RW1/driver of the bus has taken the appellant to the hospital and prayed for setting aside the award of the Tribunal and for granting compensation.

6.Per contra, the learned counsel appearing for the respondent/Transport Corporation contended that the accident has occurred only due to rash and negligent driving by the appellant and FIR was registered against the appellant. The appellant pleaded guilty in criminal case and paid a sum of Rs.500/- as fine. The respondent has examined the driver of the bus as RW1 and proved that the accident has occurred only due to rash and negligent driving by the appellant. The Tribunal considering the evidence of RW1 and documents held that the accident has occurred only due to rash and negligent driving by the appellant. There is no error in the said finding and prayed for dismissal of the appeal.

7.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the respondent/Transport Corporation and perused all the materials available on record.

8.It is the case of the appellant that while he was driving his Tata Ace, the bus belonging to the respondent was driven in a rash and negligent manner in the opposite direction. The said bus after crossing the curve instead of going towards East, came towards West in a rash and negligent manner, the appellant turned his vehicle to the western side of the road. The driver

of the bus who slept while driving the bus, came in a rash and negligent manner dashed against the Tata Ace driven by the appellant. According to the appellant, the accident has occurred only due to rash and negligent driving by the driver of the bus. In the accident, the appellant and the cleaner Kumaresan suffered grievous injuries. They were admitted in Kurinji Hospital, Salem. In view of the same, the appellant could not allege any complaint with the police and the driver of the bus taking advantage of the situation, lodged a false complaint against the appellant. In the claim petition, the appellant has stated that he spent a sum of Rs.1,21,500/- for repairing the vehicle and he suffered loss of income to the tune of Rs.22,500/-. The appellant claimed a sum of Rs.1,53,955/- from the respondent for the damages to the vehicle and loss of income. To substantiate the above contention, the appellant examined himself as PW1 and one Kumaresan, cleaner of the lorry was examined as PW2. On the other hand, it is the contention of the respondent that the accident has occurred only due to rash and negligent driving by the appellant. FIR has been lodged only against the appellant. The appellant was convicted in criminal case and paid fine a sum of Rs.400/- in the Court of Judicial Magistrate, Perambalur. To substantiate the said contention, the respondent examined the driver of the bus as RW1. Before the Tribunal the appellant denied that he was convicted and paid Rs.400/- fine. According to the appellant, the said criminal case was pending at the time of trial. The Tribunal did not accept the contention of the appellant that he cannot lodge complaint since he was admitted in the hospital. The Tribunal has held that even if injured person is admitted in the hospital, he can give information to the concerned police. If the police had not come to the hospital and register the complaint, the victim can bring the same to the notice of the higher police official and also initiate proceedings before the concerned Court for appropriation action.

9. From the award of the Tribunal, it is seen that the appellant has not substantiated the contention that the criminal case was pending at the time of trial of the claim petition by producing any document or examining the police to prove that the criminal case was pending before the Criminal Court. The appellant has stated that the criminal case is still pending at the time of filing the appeal. The appellant has not filed any proof in typed set of papers to prove the same. The Tribunal considering the fact that there was 200 feet distance between the curve and place of occurrence, held that the appellant had sufficient space to avoid the accident. The appellant marked Ex.P2 and Ex.P3. The Tribunal, considering Ex.P2 held that in the rough sketch, only place of accident has been mentioned and it was not mentioned where the minidor and bus stationed after

the accident. In view of the lack of particulars, the Tribunal held that the appellant ought to have examined the investigating officer to prove the rough sketch and magazar and that the accident did not occur due to his negligence. In view of the same, the contention of the learned counsel for the appellant that Ex.P3 wrongly mentioned as Ex.P2 proves that RW1/driver of the bus drove the bus on the wrong side, is not acceptable.

10.It is well settled that contents of FIR or judgment in the criminal case cannot be the basis for fixing negligence. However, at the same time, the same can be taken into consideration along with evidence let in before the Tribunal to fix negligence. In the present case, the Tribunal has considered the evidence of RW1 along with FIR/Ex.P1 and Ex.P6, held that the appellant failed to prove that the accident has occurred only due to negligent act of the driver of the bus and held that the accident has occurred only due to rash and negligent driving by the appellant and dismissed the claim petition. There is no error or perversity in the award of the Tribunal warranting interference by this Court.

11.In the result, this Civil Miscellaneous Appeal is dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Subordinate Judge,
The Motor Accident Claims Tribunal,
Attur.

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

+1cc to M/s.Zeenath Begum, Advocate Sr.21704

C.M.A.No.3040 of 2013

vba[co]
srg 24/11/2020