

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3398 of 2013

Kolandhasamy .. Appellant/Claimant
(Mentally disabled person represented
by his next friend and wife Santhamani)

Vs.

1.Rangasamy

2.State Express Transport Corporation Ltd.

Having office at Pallavan salai

Chennai-600 002.

... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 21.12.2010 made in M.C.O.P.No.37 of 2009 on the file of Motor Accident Claims Tribunal, Sub Court, Perundurai.

For Appellant : Mr.P.Parthikannan
for Mr.A.K.Kumarasamy

For R1 : No appearance

For R2 : Mr.K.Kathiresan

J U D G M E N T

This matter is heard through "Video-Conferencing".

The Civil Miscellaneous Appeal is filed challenging the portion of the award fixing 50% contributory negligence on the part of the appellant as well as for enhancement of compensation granted by the Tribunal in the award dated 21.12.2010 made in M.C.O.P.No.37 of 2009 on the file of Motor Accident Claims Tribunal, Sub Court, Perundurai.

2.The appellant is claimant in M.C.O.P.No.37 of 2009 on the file of Motor Accident Claims Tribunal, Sub Court, Perundurai. The appellant represented by his wife filed the said claim petition claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in the accident that took place on 02.09.2006.

3.According to the appellant, on the date of accident, i.e., on 02.09.2006 at about 8.45 a.m., while the appellant along with his brother was travelling in a TVS moped from West to East direction on Coimbatore - Perundurai Main Road on the left hand side of the road, near Thangam service station at Chengappalli Nall Road, the 1st respondent, the driver of the bus belonging to the 2nd respondent, which came from the opposite direction, drove the bus in a rash and negligent manner, dashed against the moped driven by the appellant and caused the accident. In the accident, the appellant sustained grievous injuries and therefore, he filed the above claim petition claiming compensation as against the respondents.

4.The 1st respondent, driver of the bus filed counter statement denying the averments made by the appellant and stated that the accident has occurred only due to rash and negligent riding by the appellant. The 1st respondent drove the bus in a careful manner. The 1st respondent was acquitted by the Criminal Court. There is no valid driving license for the appellant to ride the moped. Therefore, the 1st respondent is not liable to pay any compensation to the appellant. The 1st respondent has also denied the age, income, disability and injuries sustained by the appellant. In any event, the compensation claimed by the appellant is excessive and prayed for dismissal of the claim petition as against the 1st respondent.

5.The 2nd respondent/Transport Corporation filed counter statement denying the averments made by the appellant and stated that on the date of accident, while the 1st respondent, driver of the bus was proceeding near Chengapalli check post, Coimbatore, he noticed a lorry coming in the opposite direction and suddenly stopped the bus on the left side in order to give way to the lorry. At that time, the appellant rode the TVS moped in a rash and negligent manner, tried to overtake the lorry without noticing the parked bus in the opposite left side of the road, lost his control and caused the accident. Hence, the appellant alone is responsible for the accident. The owner and insurer of the TVS moped were not made as parties to the claim petition and hence, the claim petition is dismissed for non-joinder of necessary parties. The 1st respondent, driver of the bus was acquitted by the Criminal Court. Therefore, the 2nd respondent/Transport Corporation is not liable to pay any compensation to the appellant. The 2nd respondent/Transport

Corporation has also denied the age, income and injuries sustained by the appellant. In any event, the compensation claimed by the appellant is excessive and prayed for dismissal of the claim petition as against the 2nd respondent.

6. Before the Tribunal, one Santhamani, wife of the appellant, was examined as P.W.1, Dr. John Gurupatham and Dr. Periasamy were examined as P.W.2 and P.W.3, one Deivasigamani, brother of the appellant, eye-witness to the accident was examined as P.W.4 and marked 16 documents as Exs. P1 to P16. On the side of the respondents, one Rangasamy, the driver of the bus/1st respondent herein, was examined as R.W.1 and the judgment of the Criminal Court was marked as Ex.R1.

7. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by both the appellant, the rider of TVS moped as well as the 1st respondent, driver of the bus belonging to the 2nd respondent/Transport Corporation, fixed 50 : 50 contributory negligence on the part of the appellant as well as the 1st respondent respectively, awarded Rs.4,78,711/- as compensation and directed the respondents to jointly and severally pay a sum of Rs.2,39,356/- being 50% of the award amount as compensation to the appellant.

8. The appellant has come out with the present appeal challenging the portion of the award fixing 50% contributory negligence on the part of the appellant as well as for enhancement of compensation.

9. Though the appellant has raised grounds with regard to quantum of compensation awarded by the Tribunal, at the time of arguments, the learned counsel appearing for the appellant restricted his arguments only with regard to negligence.

10. The learned counsel appearing for the appellant contended that the accident has occurred only due to rash and negligent driving by the 1st respondent, driver of the bus belonging to the 2nd respondent/Transport Corporation. The Tribunal fixed 50% negligence on the part of the appellant relying on the judgment of the Criminal Court. R.W.1/driver of the bus was acquitted by the Criminal Court by giving benefit of doubt. The Hon'ble Apex Court and this Court in number of cases held that the Motor Vehicles Act is a benevolent legislation and the judgments passed by the Criminal Court are not binding on the Tribunal. The Tribunal erred in relying on the evidence of R.W.1 fixed 50% contributory negligence on the part of the appellant without there being any independent witness. The respondents have not examined anybody from the concerned RTO to prove that the appellant did not possess driving license. The Tribunal erred

in holding that the appellant did not possess driving license at the time of accident. The learned counsel further contended that due to the injuries, the appellant became mentally unsound. The Tribunal ought to have directed the 2nd respondent to pay entire compensation awarded instead of apportioning between the appellant and the 2nd respondent and prayed for setting aside 50% of the contributory negligence fixed on the part of the appellant and for enhancement of compensation.

11.The learned counsel appearing for the 2nd respondent/Transport Corporation contended that the accident has occurred only due to negligence on the part of the appellant. The respondents proved the same by examining the driver of the bus as R.W.1 and marking judgment of the Criminal Court as Ex.R1. The Criminal Court considering the entire materials, held that the appellant only came to the wrong side, dashed against the bus, caused the accident and acquitted the 1st respondent/R.W.1. The Tribunal considering Ex.R1/judgment of the Criminal Court and Ex.P2/Rough sketch, rightly fixed negligence on the part of the appellant and granted compensation. The total compensation awarded by the Tribunal under different heads are not meagre and prayed for dismissal of the appeal.

12.Though notice has been served on the 1st respondent and his name is printed in the cause list, there is no representation for the 1st respondent either in person or through counsel.

13.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 2nd respondent/Transport Corporation and perused the entire materials on record.

14.From the materials on record, it is seen that it is the contention of the appellant that while he was riding TVS moped, the 1st respondent drove the bus belonging to the 2nd respondent/Transport Corporation in a rash and negligent manner, dashed against the TVS moped and caused the accident. To substantiate this, the appellant examined his wife as P.W.1, examined his brother, who according to the appellant was coming behind him in another TVS vehicle as P.W.2. The appellant also marked F.I.R. as Ex.P1 which was registered against the 1st respondent, driver of the bus, based on the complaint given by his brother. On the other hand, it is the case of the respondents that the appellant is only responsible for the accident, he rode the moped in a rash and negligent manner, dashed against the bus and caused the accident. To substantiate this, the respondents examined the 1st respondent, driver of the bus as R.W.1 and marked the judgment of the Criminal Court, as Ex.R1, where the 1st respondent was acquitted. The appellant

examined his wife Santhamani as P.W.1, his brother as P.W.2 and the respondents have examined the 1st respondent as R.W.1. All the three witnesses are interested witnesses and they deposed in support of their respective stand. The Tribunal considering Ex.R1/judgment of the Criminal Court, where the 1st respondent was acquitted, wherein it has been held that the appellant came in the wrong side, dashed against the bus and caused the accident. In Ex.R1, it has been held that the petitioner came in the wrong side without any driving license and invited the accident. Therefore, from Ex.R1 and P2/Rough sketch, it is quite clear that the appellant only came to the wrong side and contributed to the negligence. The Tribunal without properly considering Ex.P2/Rough sketch, held that from Ex.R1 and Ex.P2/Rough sketch, it is quite clear that the appellant came to the wrong side and contributed the negligence. From Ex.P2/Rough sketch, it is seen that the appellant was riding his moped from West to East direction, the 1st respondent drove the bus from East to West direction, the accident has occurred on the Northern side of the road, i.e., on the extreme left hand side of the appellant and right hand side of the bus. In view of the same, the finding of the Tribunal that the appellant came to the wrong side and hence, fixed 50% contributed negligence on the part of the appellant is erroneous. Therefore, finding of the Tribunal fixing 50% contributory negligence on the part of the appellant is liable to be set aside and is hereby set aside. The entire negligence is fixed on the 1st respondent, the driver of the bus. The appellant is entitled to entire compensation awarded by the Tribunal and the respondents are directed to pay entire compensation awarded by the Tribunal to the appellant.

15. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.4,78,711/- along with interest and costs is confirmed. Both the respondents are directed to deposit the entire amount awarded by the Tribunal along with interest and costs, less the amount already deposited, if any, within a period of twelve weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant is permitted to withdraw the entire amount awarded by the Tribunal along with interest and costs, less the amount if any, already withdrawn. No costs.

Sd/-
Asst.Registrar (CS VIII)

/true copy/
Sub Asst. Registrar

kj

To

1.The Subordinate Judge
The Motor Accident Claims Tribunal
Perundurai.

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

+1 cc to Mr.S.Kaithamalai Kumaran Advocate sr 38707

+1 cc to Mr.K.Kathiresan Advocate sr38789

C.M.A.No.3398 of 2013

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