

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.02.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.3699 of 2013

P.Sellamuthu

... Appellant/Claimant

vs.

The Managing Director,
Tamil Nadu State Transport Corporation,
Salem - 7.

... Respondent/Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Decree and Judgment dated 01.04.2011 in M.C.O.P.No.622 of 2007 on the file of the Motor Accident Claims Tribunal, Principal Subordinate Court, Salem.

For Appellant : Mr.A.Kumar

For Respondent : Mr.D.Venkatachalam

J U D G M E N T

The appellant is the claimant in MCOP.No.622 of 2007 on the file of the Motor Accident Claims Tribunal, Principal Subordinate Court, Salem. He filed the above claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.3,00,000/- for the injuries sustained by him in a road accident that took place on 11.01.2007.

2. On 11.01.2007, at about 11.30 hours, when the appellant / claimant was riding his Bullock Cart on Salem - Attur main road, near Mettupatty bus stop, a TSTC bus bearing Registration No.TN 27 N 1323 came behind the Bullock Cart in a rash and negligent manner and hit the Bullock Cart, due to which, the appellant / claimant fell down and sustained grievous injuries. Therefore, he filed the claim petition seeking compensation for the injuries sustained by him.

3. Before the Tribunal, on the side of the appellant / claimant, PW1 was examined and Exs.P1 and P2 were marked. On the side of the respondents, RW1 was examined and no documentary evidence was marked.

4. The learned Principal Subordinate Judge, Salem after analysing the evidence on record, dismissed the claim petition stating that the appellant / claimant failed to establish that the injuries mentioned in the wound certificate were the result of the road accident that took place on 11.01.2007. Challenging the same, the claimant has filed this appeal.

5. The learned counsel appearing for the appellant / claimant submitted that the Tribunal had failed to appreciate the evidence produced by the appellant / claimant and had grossly erred in dismissing the claim petition. He submitted that the Tribunal ought to have considered the First Information Report that was registered against the driver of the TSTC bus and the injuries mentioned in the wound certificate (Ex.P2). He therefore prayed for allowing the appeal.

6. The learned counsel appearing for the respondent submitted that the driver of the respondent bus drove the bus with due care and caution, by observing traffic rules. He submitted that on 11.01.2007, the bus was proceeding from Salem Old Bus stand towards Vazhapady near Mettupatti Sindamani Mill and at that time, the Bullock Cart driver suddenly turned his Bullock Cart to the right side without any signal and hence the driver stopped the bus. He further submitted that the bus did not hit the Bullock Cart and only due to fear, the appellant / claimant fell down and sustained injuries. Hence, the learned counsel strongly denied the manner of the accident. Therefore, he submitted that the Tribunal was right in dismissing the claim petition and prayed for dismissal of the appeal.

7. Heard the learned counsel appearing for the appellant / claimant and respondent and perused the materials available on record.

8. From the materials available on record, it is seen that the appellant / claimant examined himself as PW1 and marked First Information Report (Ex.P1), which was registered against the driver of the TSTC bus. There is no evidence to disprove the fact that the accident was due to the rash and negligent driving of the driver of the TSTC bus. In regard to the injuries, the appellant / claimant marked wound certificate (Ex.P2). However, the Tribunal opined that if the appellant / claimant was admitted in the Hospital on 01.11.2007, there would have been entry on the Accident Register. Since no other relevant documents were produced by the appellant / claimant, the Tribunal concluded that he is not entitled to get any compensation and dismissed the claim petition.

9. On the side of the respondent, one G.Rangasamy (RW1) was examined and no other document has been marked. The Tribunal has not considered the evidence given by RW1, ticket checker who alleged to have attended duty on that day. He has deposed that on 11.01.2007, he was travelling in the said bus for ticket checking near Sindamani Mill and the said bus was overtaking a Bullock Cart and at that time the said bulls suddenly turned to the right side due to fear and dashed against the bus. At that point of time, the driver of the Bullock Cart jumped down as a result of which, he sustained injuries and sent to the Government Hospital at Salem. RW1 had further deposed that the accident was due to the negligent act of the Bullock Cart driver. It is clear from the deposition of RW1 that the Bullock Cart was going in front of the bus and the bus tried to overtake the same as a result of which, the bullocks got frightened and the Bullock Cart dashed against the bus. Even assuming that the bullocks out of fear came and dashed the bus, it is clear that the bus had overtaken the Bullock Cart. It is the duty of the bus driver to see that the Bullock Cart is going in front and take some precaution while trying to overtake the same, since it an animal which would not know when a bus will cross and go. That being the case, the Tribunal ought to have considered these aspects and considered the claim petition.

10. Therefore, the matter is remanded back to the Motor Accident Claims Tribunal / Principal Subordinate Court, Salem for fresh consideration and passing of orders. Accordingly, this Civil Miscellaneous Appeal is disposed of. No costs. The learned Principal Subordinate Judge, Salem is required to consider the matter afresh and pass appropriate orders within a period of six months from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Motor Accidents Claims Tribunal,
Principal Subordinate Court,
Salem.

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

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+1cc to Mr.A.Kumar, Advocate SR.14717
+1cc to Mr.D.Venkatachalam, Advocate SR.14796

C.M.A.No.3699 of 2013

SR(CO)
CB(22/12/2020)



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