

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.42 of 2013

Minor Rajalakshmi
(Represented by her mother and natural
guardian Anandhanayagi) ... Appellant/Petitioner

Vs.

The Managing Director
Tamil Nadu State Transport Corporation
Chennai. ... Respondent/Respondent
(Cause title accepted vide order of this
Court dated 2.11.2004 made in
C.M.P.No.17241 of 2004)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 28.07.2003 made in M.C.O.P.No.66 of 1997 on the file of Motor Accident Claims Tribunal, Principal Sub-Court, (Additional In-charge), Vridhachalam.

For Appellant : Mr.V.Lakshmi Narayanan
for Mr.V.Raghavachari

For Respondent : Mr.K.J.Sivakumar

J U D G M E N T

This matter is heard through "Video-Conferencing".

The Civil Miscellaneous Appeal is filed challenging the order of dismissal dated 28.07.2003 made in M.C.O.P.No.66 of 1997 on the file of Motor Accident Claims Tribunal, Principal Sub-Court, (Additional In-charge), Vridhachalam.

2.The appellant is claimant in M.C.O.P.No.66 of 1997 on the file of Motor Accident Claims Tribunal, Principal Sub-Court, (Additional In-charge), Vridhachalam. The appellant represented by her mother filed the said claim petition claiming a sum of Rs.1,00,000/- as compensation for the injuries sustained by her in the accident that took place on 28.05.1991.

3. According to the appellant, on the date of accident i.e., on 28.05.1991 at about 6.00 p.m., while the appellant was walking along with her niece in Trichy to Madras National Highways Road, after getting down from the Saradha bus near Edaigal Rehabilitation Centre, the driver of the bus belonging to the respondent/Transport Corporation drove the same in a rash and negligent manner, lost his control and dashed against the appellant and caused the accident. In the accident, the appellant sustained grievous injuries all over the body and hence, she filed the above said claim petition claiming compensation for the injuries against the respondent.

4. The respondent/Transport Corporation filed counter statement denying the averments made in the claim petition and stated that the accident did not occur due to rash and negligent driving by the driver of the bus belonging to the respondent. Due to sudden crossing of the road by the appellant, she fell on the thar road and sustained minor injuries. Therefore, the respondent/Transport Corporation is not liable to pay any compensation to the appellant. The respondent has also denied the age 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.

5. Before the Tribunal, Dr. John Normal was examined himself as P.W.1 and the mother of the appellant was examined as P.W.2 and three documents were marked as Exs.P1 to P3. The respondent/Transport Corporation did not let in any oral and documentary evidence.

6. The Tribunal considering the pleadings, oral and documentary evidence, dismissed the claim petition holding that the averments made in the claim petition are contrary and the appellant has not produced any documents to prove her case.

7. Against the order of dismissal dated 28.07.2003 made in M.C.O.P.No.66 of 1997, the appellant has come out with the present appeal.

8. The learned counsel appearing for the appellant contended that when the respondent accepted the accident, the Tribunal erroneously framed an issue that whether the accident occurred or not. The appellant sustained both mental and physical injuries in the accident. The appellant proved the same by letting in oral and documentary evidence. P.W.1/Psychiatrist deposed the mental condition of the appellant. The Tribunal erroneously rejected the evidence let in by the appellant. The appellant was admitted in a private hospital immediately after the accident on 28.05.1991 as she was in serious condition and

thereafter only shifted to Government Hospital on 30.05.1991. The Tribunal erred in dismissing the claim petition merely on the ground of non lodging complaint and no F.I.R. was registered against the driver and made submissions with regard to condition of the appellant and prayed for allowing the appeal and for granting compensation.

9.The learned counsel appearing for the respondent/Transport Corporation made his submissions in support of the award passed by the Tribunal and prayed for dismissal of the appeal.

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

11.From the materials on record, it is seen that it is the contention of the appellant that on 28.05.1991 at about 6.00 p.m., while the appellant was walking along with her niece in Trichy to Chennai National Highways Road near Edaigal Rehabilitation Centre, the driver of the bus belonging to the respondent/Transport Corporation drove the bus in a rash and negligent manner, dashed against the appellant and caused the accident. In the accident, the appellant sustained injuries in the head and all over the body. No complaint was lodged against the driver and no F.I.R. was registered with regard to the accident. The mother of the appellant was examined as P.W.2 and she is not an eye-witness to the accident. The appellant has not examined any eye-witness to prove that the accident has occurred on 28.05.1991 and the driver of the respondent/Transport Corporation was responsible for the accident. The accident has occurred on 28.05.1991 at 6.00 p.m. The appellant was admitted in Government Hospital on 30.05.1991. P.W.2, mother of the appellant deposed that initially the appellant was admitted in a private hospital on 28.05.1991 and subsequently on 30.05.1991 she was shifted to Government Hospital. The appellant has not produced any materials to show that immediately after the accident, she was admitted in a private hospital and thereafter, shifted to Government Hospital. The appellant has not produced any Accident Register, wound certificate and F.I.R. or the report of the Motor Vehicle Inspector before the Tribunal. P.W.2 deposed that the appellant is taking treatment during trial for mental condition and examined the Psychiatrist as P.W.1. P.W.1/Doctor is not a competent person to speak about the accident or negligence on the part of the driver of the bus belonging to the respondent/Transport Corporation. The Tribunal considering all the above materials in proper perspective, dismissed the claim petition by giving cogent and valid reason. There is no error in the award of the Tribunal warranting interference by this Court.

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

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

kj

To

The Principal Subordinate Judge,
(Additional In-charge)
The Motor Accident Claims Tribunal,
Vridhachalam.

Copy to

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

+1cc to M/s.V.Raghavachari, Advocate Sr.39542

C.M.A.No.42 of 2013

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