

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.01.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.558 of 2013

S.Nagaraj

... Appellant

Vs.

The Managing Director,
Metropolitan Transport Corporation,
Chennai.

...Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988, against the fair and decreetal order passed in MCOP. No.3810 of 2007 dated 21.07.2010 passed by the Motor Accidents Claims Tribunal, II Small Causes Court, Chennai.

For Appellant : Mr.S.Parthasarathy

For Respondent: Mr.S.Sivakumar - No appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the fair and decreetal order passed in MCOP. No.3810 of 2007, dated 21.07.2010 passed by the Motor Accidents Claims Tribunal/II Small Causes Court, Chennai.

2. It is the case of the appellant that on 10.09.2006, at about 18.45 hours, when the appellant was waiting for the bus at 100 Feet Road in MMDA Bus stop, at the time, the MTC Bus bearing Registration no.TN 01 N 3835, driven by its driver, in a rash and negligent manner, dashed against the appellant. In the result, the appellant had sustained injuries all over the body. Hence, the appellant/claimant, has filed a Claim Petition before the Motor Accidents Claims Tribunal (II Court of Small Causes) Chennai, against respondent, claiming Rs.2,00,000/- as compensation under various heads.

3. During the trial before the Tribunal, in order to prove his case, the appellant/claimant was examined two witnesses viz., P.W.1 and P.W.2 and marked five documents, they are as follows:-

Ex.P1 : Copy of the F.I.R.

Ex.P2 : Discharge of summary
Ex.P3 : Copy of Driving License (Xerox)
Ex.P4 : Disability Certificate
Ex.P5 : X-Ray

On the side of the respondent, One witness was examined as R.W.1 and no document was filed.

4. The Tribunal, considering the pleadings, oral and documentary evidence, dismissed the petition. Aggrieved by the award passed by the Tribunal, the appellant Claimant has filed this appeal before this Court.

5. The learned counsel for the appellant Claimant would submit that while the appellant was alighting from the bus, the driver was suddenly took the bus without noticing any signal from the Conductor. So, the accident had occurred only due to the fault of the driver of the bus. Due to the accident, the appellant sustained grievous injuries all over his body and both legs were fractured. The Doctor had assessed the percentage of the disability at 35%. The Tribunal has failed to consider all these facts, dismissed the petition on the ground that the appellant was under the influence of Alcohol. But the learned counsel for the appellant would further submit that from the complaint and FIR itself have not stated that the appellant was under the influence of alcohol. Therefore, the learned counsel prays to allow this appeal.

6. Notice has been on the respondent and printed the name of the learned counsel for the respondent Transport Corporation in the cause list. However, today, there is no representation on behalf of the respondent. Since the appeal is pending from 2013 and inspite of giving sufficient opportunities, the respondent has not come forward to conduct the case and hence, this Court is not inclined to keep the case pending and dispose the same after going through the records.

7. Heard the learned counsel for the appellant and perused the materials available on record. There is no appearance on behalf of the respondent Transport Corporation.

8. The learned counsel for the appellant submitted that the accident was occurred due to negligence driving of the driver of the bus. Due to which, the appellant sustained grievous injuries and suffered 35% of the disability.

9. A perusal of the records, it is seen that the respondent viz., Metropolitan Transport Corporation has filed a counter affidavit before the Tribunal, submitted that there is no negligence on the part of the driver of the bus. On 10.09.2006 at about 19.10 hours, the bus was stopped at MMDA Stop. After

boarding the passengers, the bus was moved from the bus stop. At that time, a male passenger, under the influence of Alcohol, tried to catch the bus. Thereby, he lost control and fell down on the road from the bus. Due to which, he sustained injuries and the same are simple in nature.

10. It could be seen from the evidence of Ex.P2 i.e. Discharge Summary that on 10.09.2006, at about 8.30 P.M., the petitioner was admitted in the Government Hospital, Royapettah for treatment, under the influence of alcohol and very un co-operative and causing nuisance to the hospital workers and staff members.

11. On perusal of the award passed by the Tribunal, it is seen that the accident has not been disputed, and only the cause of accident, i.e. Whether the accident had occurred due to the rash and negligent driving of the driver of the bus or due to the negligence of the claimant, was disputed. Though it was proved before the Tribunal that the accident had occurred only due to the negligence of the appellant. Therefore, the Tribunal has come to the conclusion that the appellant Transport Corporation is not liable to compensate the claimant for the injuries and the claim petition was dismissed.

12. In view of the above, this Court do not find any error in the order dated 21.07.2010 passed by the Tribunal in M.C.O.P.No.3810 of 2007 and there is no merit in the appeal. Hence, this Court is not inclined to interfere with the same.

13. In the result, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Motor Accidents Claims Tribunal,
II Small Causes Court, Chennai.

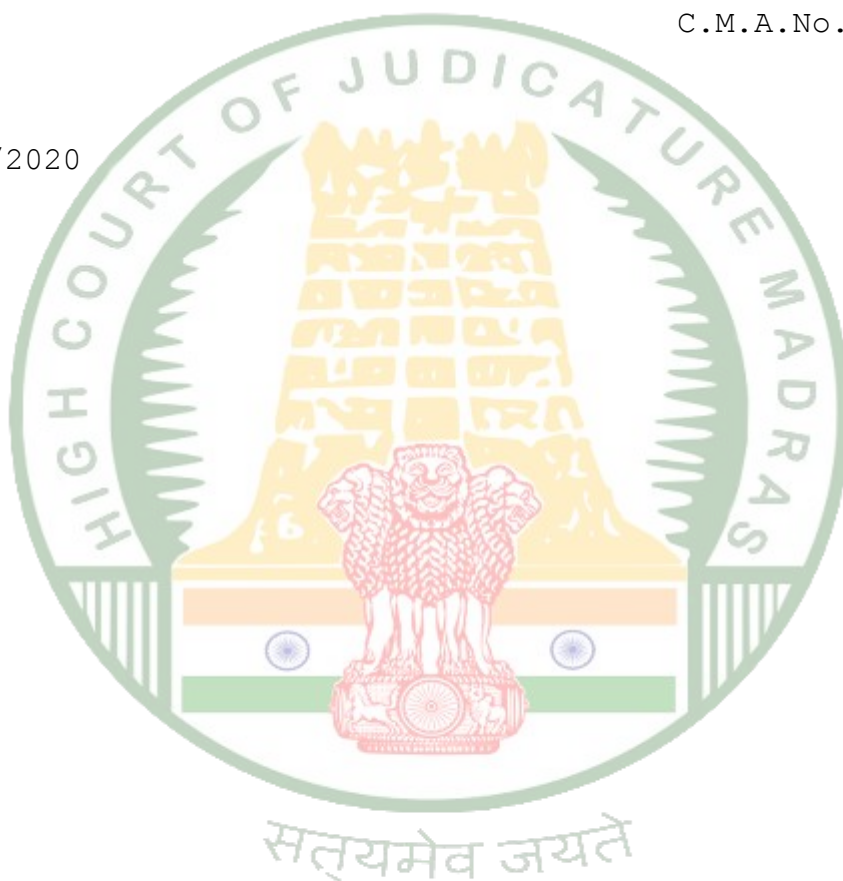
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The Section Officer,
VR Section,
High Court, Madras.

+lcc to M/s.S.Parthasarathy, Advocate Sr.330

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