

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.4056 of 2019

and

C.M.P.No.3166 of 2020

The Managing Director,
Tamil Nadu State Transport
Corporation, Kumbakonam Region,
Trichy - 620 001.

... Appellant

Vs.

P.Krishnamoorthy

... Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 05.04.2019 made in M.C.O.P.No.39 of 2016, on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Vellore.

For Appellant : Mr.D.Venkatachalam

For Respondent : Mr.A.Rajendiran

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/ Transport Corporation challenging the award dated 05.04.2019 made in M.C.O.P.No.39 of 2016, on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Vellore.

2.The appellant/Transport Corporation is the respondent in M.C.O.P.No.39 of 2016, on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Vellore. The respondent filed the said claim petition claiming a sum of Rs.30,00,000/- as compensation for the injuries sustained by him in an accident that took place on 24.10.2015.

Page numbers

3. According to the respondent, on the date of the accident i.e. on 24.10.2015, at about 10.00 a.m., while he was travelling in the bus bearing Registration No. TN 45 N 3130 from Kannamangalam to Arni and was seated in the last row of the bus, SLS Mill, Sevoor, the driver of the bus drove the vehicle rashly and negligently with high speed without caring the road conditions and applied sudden brake and as a result, the appellant who was sitting in the last row, suddenly fell down. Due to the accident, the appellant sustained grievous injuries. Therefore, the respondent has filed above claim petition claiming compensation against the appellant.

4. The appellant/Transport Corporation filed counter statement denying the averments made by the respondent and contended that the appellant bus was not involved in any accident. If really, the accident had happened as narrated by the claimant, the co-passengers who travelled along with the claimant in the bus would not have allowed the bus to move from the accident spot. FIR was filed after a lapse of 3 days. It is further contended that FIR filed against the driver of the appellant is pending. The allegations of the respondent in the petition is nothing but an imaginary story in order to make fortune out of misfortune.

5. Before the Tribunal, the respondent, examined himself as P.W.1 and one Kumaravel/co-passenger was examined as P.W.2 and marked ten documents as Exs.P1 to P10. On the side of the appellant/Transport Corporation, one V.Narayanasamy / conductor of the bus was examined as R.W.1 and Ex.C1 disability certificate was marked through the Court.

6. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident had occurred due to rash and negligent driving by the driver of the bus belonging to the appellant/Transport Corporation and directed the appellant/Transport Corporation to pay a sum of Rs.5,33,629/- as compensation to the respondent.

7. Against the said award dated 05.04.2019 made in M.C.O.P.No.39 of 2016, granting compensation to the respondent, the appellant/Transport Corporation has come out with the present appeal.

8. The learned counsel appearing for the appellant contended that the Tribunal failed to note that there was no such accident occurred as alleged by the respondent. The bus completed the trip without involving in any accident. The respondent falsely implicated the bus to get compensation from the appellant

Page numbers

Corporation. It is further contended that if the respondent was travelling in the bus and he fell down from the bus due to rash and negligent driving, the co-passengers travelling in the bus would not have certainly allowed the bus to proceed further and they could have sent the bus to the police station. FIR was registered after 3 days from the said date of accident. The Tribunal has failed to consider the evidence of R.W.1 conductor of the bus who is the competent person to speak about the accident. No valid document was filed to prove age and income of the respondent. The Tribunal has wrongly adopted the multiplier method to calculate the loss of earning capacity. In any event, the compensation awarded by the Tribunal is very excessive and prayed for setting aside the award of the Tribunal.

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

10. From the materials available on record, it is seen that the Ex.P.1-FIR was registered against the driver of the bus. Though the appellant/Transport Corporation has examined the conductor of the bus as R.W.1, has not let in any independent evidence, to prove the said contention that the driver was not responsible for the accident. On the other hand, the respondent has examined P.W.2/co-passenger to prove that the accident occurred due to rash and negligent driving by the driver of the bus. The Tribunal considering the contents of Ex.P.1/FIR and Ex.P7/requisition letter, held that the accident has occurred due to rash and negligent driving by the driver of the bus belonging to the appellant/Transport Corporation. There is no error in the said finding of the Tribunal warranting interference by this Court.

11. As far as quantum of compensation is concerned, the respondent was aged 73 years at the time of accident and was earning a sum of Rs.30,000/- per month by doing Brick production business. The respondent has failed to prove the same. In the absence of any material evidence, the Tribunal fixed monthly income of the respondent as Rs.6,500/- per month. Medical Board assessed the disability of the respondent as 75%. The disability certificate issued by the Medical Board was marked as Ex.C1. The Tribunal applied multiplier method for awarding compensation towards disability by fixing monthly income of the appellant at Rs.6,500/- and by applying multiplier '5' granted compensation. The total compensation awarded by the Tribunal is not excessive warranting interference by this Court.

Page numbers

12.In the result, this Civil Miscellaneous Appeal is dismissed and sum of Rs.5,33,629/- awarded by the Tribunal as compensation to the respondent, along with interest and costs is confirmed. The appellant/Transport Corporation is directed to deposit the award amount 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 respondent is permitted to withdraw the award amount, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

mtl

To

1.The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Vellore.

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

+1cc to Mr.D.Venkatachalam, Advocate SR.14340

+1cc to Mr.A.Rajendiran, Advocate SR.14142

C.M.A.No.4056 of 2019
and

C.M.P.No.3166 of 2020

SVI (CO)
CB(28/12/2020)

WEB COPY

Page numbers