



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.03.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No.595 of 2021
and C.M.P.No.3645 of 2021

The Tamilnadu State Transport Corporation Limited,
Rep. Through the Managing Director,
Rangapuram, Vellore. .. Appellant/Respondent

Vs.

Vijayan .. Respondent/Petitioner

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 24.01.2020, made in M.C.O.P. No.321 of 2017, on the file of the Special Sub Court, (Motor Accident Claims Tribunal), Tirupattur.

For Appellant : Mr.K.J.Sivakumar

J U D G M E N T

(The matter is heard through Video Conferencing/Hybrid mode)

This Civil Miscellaneous Appeal has been filed by the appellant-Transport Corporation to set aside the award of the Tribunal dated 24.01.2020, made in M.C.O.P. No.321 of 2017, on the file of the Special Sub Court, (Motor Accident Claims Tribunal), Tirupattur.

2.The appellant is the respondent in M.C.O.P. No.321 of 2017, on the file of the Special Sub Court, (Motor Accident Claims Tribunal), Tirupattur. The respondent/claimant filed the said claim petition, claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident that took place on 25.08.2017.

3.According to the respondent, on the date of accident, he was riding a Motorcycle bearing Registration No.TN-23-AY-7002. Near 9th Kari Hair Pin Bend, the driver of Bus bearing Registration No.TN-23-N-2001 belonging to the appellant-Transport Corporation who was proceeding in front of the motorcylce, on the Ponneri to Elagiri hills road, suddenly



applied the brake and caused the accident. Due to the rash and negligent driving by the driver of the Bus, the Motorcycle driven by the respondent dashed on the Bus. In the accident, the respondent sustained grievous injuries. The accident occurred only due to rash and negligent driving by driver of the Bus. Hence, the respondent filed the claim petition claiming compensation against the appellant as owner of the Bus involved in the accident.

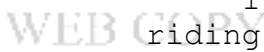
4.The appellant-Transport Corporation filed counter statement and denied all the averments made by the respondent in the claim petition. According to the appellant, the accident occurred only due to rash and negligent riding of Motorcycle by the respondent. FIR was also registered against the respondent. Hence, the appellant is not liable to pay any compensation to the respondent. In any event, the respondent has to prove his age, avocation and income, injuries sustained and treatment taken, to claim compensation. The total compensation claimed by the respondent is excessive and prayed for dismissal of the claim petition.

5.Before the Tribunal, the respondent examined himself as P.W.1 and marked 7 documents as Exs.P1 to P7. The appellant examined the driver of the Bus involved in the accident as R.W.1 and marked one document as Ex.R1.

6.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by driver of the Bus belonging to the appellant-Transport Corporation and directed the appellant to pay a sum of Rs.1,42,047/- as compensation to the respondent.

7.To set aside the award of the Tribunal dated 24.01.2020, made in M.C.O.P. No.321 of 2017, the appellant - Transport Corporation has come out with the present appeal.

8.The learned counsel appearing for the appellant/Transport Corporation contended that the Tribunal failed to note that the accident has occurred only due to rash and negligent riding of Motorcycle by the respondent. The Tribunal ought not to have relied upon the evidence of P.W.1, whose evidence was not corroborated by any other independent witness. The Tribunal ought to have fixed entire negligence on the respondent considering Ex.P1-the FIR registered against the respondent. The monthly income of Rs.9,000/- fixed by the Tribunal and the sum of Rs.30,000/- granted towards pain and sufferings are excessive. The total compensation awarded by the Tribunal is excessive and prayed for setting aside the award of the Tribunal.



10. It is the case of the respondent that while he was riding the Motorcycle, the driver of the Bus belonging to the appellant/Transport Corporation which was going ahead the Motorcycle, suddenly applied brake. Due to the said impact, the Motorcycle dashed on the Bus and thus the accident occurred. To prove his case, the respondent examined himself as P.W.1. On the other hand, it is the contention of the appellant/Transport Corporation that while the Bus belonging to them was driven carefully, the respondent drove the Motorcycle in a rash and negligent manner and dashed against the Bus and thus the accident occurred. FIR was also registered against the respondent. To prove their case, the appellant examined the driver of the Bus as R.W.1. The appellant has not examined any independent witness to prove their contention. R.W.1, the driver of the Bus is an interested witness. FIR is not a cyclopedia. It is well settled that negligence cannot be fixed relying on the FIR or judgments of the Criminal Court. The Tribunal has to independently consider the evidence let in before it. The Tribunal considering the evidence of P.W.1, victim and eye-witness to the accident and failure on the part of the appellant to examine any independent eye-witness, held that the accident has occurred only due to rash and negligent driving by the driver of the Bus belonging to the appellant/Transport Corporation and directed the appellant to pay the compensation to the respondent. There is no error in the said finding of the Tribunal warranting interference by this Court.

<https://hcservices.ecourts.gov.in/hcservices/>



12. In the result, this Civil Miscellaneous Appeal is dismissed and the amount awarded by the Tribunal at Rs.1,42,047/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit is confirmed. The appellant-Transport Corporation is directed to deposit the award amount along with interest and costs, less the amount already deposited, within a period of twelve weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P. No.321 of 2017. 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. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar (CS-VIII)

//True copy//

Sub Assistant Registrar

gsa

To

The Special Subordinate Judge,
(Motor Accident Claims Tribunal),
Tirupattur.

+1cc to Mr.K.J.Sivakumar, Advocate SR.No.15694

C.M.A. No.595 of 2021

AK(CO)
GMY(21/10/2021)