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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.07.2021

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.2295 of 2015

Murugan

...Appellant / Claimant

Vs

The Managing Director,
Tamil Nadu State Transport Corporation,
(Villupuram Division-1),
No.3/137, Salamedu,
Vazhutha Reddy,
Villupuram District.

...Respondent / Respondent

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act against the decree and judgment dated 16.09.2014 and made in MACTOP.No.570 of 2010 on the file of the Motor Accident Claims Tribunal, V Court of Small Causes, Chennai.

For Appellant : Mr.F.Terry Chella Raja

For Respondent : Mr.K.J.Sivakumar

JUDGMENT

(This case is heard through Video Conferencing)

This civil miscellaneous appeal has been filed by the claimant challenging the exoneration of the liability of the respondent under the impugned judgment and decree dated 16.09.2014 passed by the Motor Accident Claims Tribunal (Vth Court of Small Causes, Chennai) in MCOP.No.570 of 2010.

2. Heard Mr.F.Terry Chella Raja learned counsel for the Appellant/claimant and Mr.K.J.Sivakumar learned counsel appearing for the respondent Transport Corporation.

3. The Appellant/claimant sustained injuries on 18.10.2008 as a result of an accident between two vehicles namely the motor cycle bearing registration No.TN02-L-9734 in which the Appellant/claimant was a rider and a bus bearing registration No.TN32-N-1402 owned by the respondent Transport Corporation. The Appellant/claimant preferred a claim petition before the Motor Accident Claims Tribunal seeking compensation for the



injuries sustained by him against the respondent as according to him, it is only the driver of the bus which is owned by the respondent Transport Corporation was responsible for the cause of the accident which resulted in him sustaining injuries.

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4. However, it was the contention of the respondent corporation before the Tribunal that their driver was not at fault as FIR was registered only against the Appellant/claimant which was marked as Ex.P8 before the Tribunal.

5. Before the Tribunal, the Appellant/claimant has filed 10 documents which were marked as Ex.P1 to Ex.P10 and three witnesses were examined on his side namely the Appellant/claimant himself as PW1, an eye-witness to the accident as PW2 and the Doctor who examined him as PW3. On the side of the respondent Corporation, their driver who was driving the bus at the time of accident was examined as RW1 and no document was filed on their side.

6. The Tribunal under the Judgment and Decree dated 16.09.2014 passed in MCOP.No.570 of 2010 exonerated the liability of the respondent Corporation based on the FIR which was marked as Ex.P8 and which has been registered only against the Appellant/claimant and held that the driver of the bus is not responsible for the cause of the accident. The Tribunal has awarded a compensation of Rs.25,000/- to the Appellant/claimant on the ground of no fault liability under section 140 of the Motor Vehicles Act.

7. The contention of the Appellant/claimant before this Court, as seen from the grounds raised in this appeal is that the Tribunal has given a go-by to the deposition of the Appellant/claimant (PW1) as well as to the deposition of the eye-witness to the accident (PW2) which clearly reveal that the driver of the bus was alone responsible for the cause of the accident. Further it is the contention of the Appellant/claimant that the FIR was registered only at the behest of the driver of the bus and therefore, the said FIR cannot be looked into for the purpose of giving a finding as to who is responsible for the cause of the accident as the driver of the bus is an interested party and is not an independent witness.

8. Learned counsel for the Appellant drew the attention of this Court to the impugned award and the findings contained therein.

9. Admittedly, FIR Ex.P8 was registered against the Appellant/claimant only at the behest of the driver of the bus owned by the respondent Corporation. The Appellant/claimant (PW1) and the eye-witness (PW2) in their depositions, they had



categorically deposed that only due to the fault of the driver of the bus, the accident had happened which resulted in the injuries sustained by the Appellant/claimant.

10. As seen from the impugned award, the Tribunal has failed to consider the cross-examination of PW1 and PW2, but instead has accepted the FIR (Ex.P8) in toto and held the driver of the bus not responsible for the cause of the accident. As observed earlier, FIR has been registered only at the behest of the driver of the bus who is not an independent person. There is no discussion whatsoever in the impugned judgment about the depositions of PW1 and PW2 wherein they have deposed that only due to the fault of the driver of the bus, the accident had happened. A consistent stand has also been taken by the Appellant/claimant as seen from his claim petition as well as from his deposition that it is only the driver of the bus who is responsible for the cause of the accident. This being the case, the Tribunal ought to have considered the depositions of PW1 and PW2, but has erroneously failed to consider the same in the impugned award.

11. For the foregoing reasons, this Court is of the considered view that the matter will have to be remanded back to the Tribunal for fresh consideration on merits and in accordance with law on the aspect of negligence within a time frame to be fixed by this Court in order to give an effective adjudication for the claim made by the Appellant/claimant.

12. In the result, this Civil Miscellaneous Appeal is disposed of and the impugned Judgment and decree dated 16.09.2014 passed by the Vth Court of Small Causes, Chennai in MCOP.No.570 of 2010 is hereby set aside and the matter is remanded back to the very same Tribunal for fresh consideration. Both the parties are permitted to adduce additional evidence, if so required, with regard to the respective contentions. The Tribunal is directed to dispose of the matter on merits and in accordance with law within a period of six months from the date of receipt of a copy of this Judgment. No costs.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Motor Accident Claims Tribunal,
V Court of Small Causes, Chennai.



2.The Section Officer,
V.R.Section,
High Court of Madras.

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+1cc to M/s.M.Malar, Advocate, S.R.No.32369

+1cc to Mr.K.J.Sivakumar, Advocate, S.R.No.32350

C.M.A.No.2295 of 2015

PP (CO)
RVM(19/11/2021)