

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.01.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3742 of 2019

and

C.M.P.No.21468 of 2019

The Managing Director
TNSTC, Sub Division Office at
Alamelurangapuram
Vellore, Vellore District. ... Appellant/1st Respondent

Vs.

1.Ravichandiran ... Respondent No.1/ Petitioner

2.Ramamoorthy ... Respondent No.2/2nd Respondent

3.IFFCO TOKIO General Insurance Company Ltd.
No.306-A, 1st floor
Katpadi main road
Virudhampet, Vellore District. ... Respondent No.3/
3rd Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 24.10.2018 made in M.C.O.P.No.2 of 2016 on the file of the Motor Accident Claims Tribunal, II Additional District and Sessions Court, Vellore @ Ranipet.

For Appellant : Mr.K.J.Sivakumar

J U D G M E N T

This matter is heard through "Video-Conferencing".

This Civil Miscellaneous Appeal has been filed by the appellant/Transport Corporation against the award dated 24.10.2018 made in M.C.O.P.No.2 of 2016 on the file of the Motor Accident Claims Tribunal, II Additional District and Sessions Court, Vellore @ Ranipet.

2.The appellant/Transport Corporation is 1st respondent in M.C.O.P.No.2 of 2016 on the file of the Motor Accident Claims

Tribunal, II Additional District and Sessions Court, Vellore @ Ranipet. The 1st respondent filed the said claim petition claiming a sum of Rs.7,50,000/- as compensation for the injuries sustained by him in the accident that took place on 15.08.2013.

3. According to the 1st respondent, on the date of accident i.e., on 15.08.2013 at about 8.30 a.m., while he was travelling as a pillion rider in the motorcycle from Walajapet to Chittoor, near Seekarapuram Village in the MBT Road, the 2nd respondent, the driver of the bus belonging to the appellant/Transport Corporation, who was coming in the opposite direction, drove the same in a rash and negligent manner, dashed against the 1st respondent's motorcycle and caused the accident. In the accident, the 1st respondent sustained grievous injuries and therefore, filed the claim petition claiming compensation against the appellant/Transport Corporation, 2nd respondent/driver of the bus and the 3rd respondent/insurer of the motorcycle.

4. The 2nd respondent, driver of the bus, remained exparte before the Tribunal.

5. The appellant/Transport Corporation filed counter statement denying the averments made by the 1st respondent and contended that the driver of the bus is not responsible for the accident. While the driver of the bus was driving the bus in a careful manner, the rider of the motorcycle in which the 1st respondent was travelling as a pillion rider, rode the motorcycle in a rash and negligent manner, dashed on the centre of the bus and fell down. Due to the said impact, the 1st respondent fell down and sustained injuries. The case has been registered against the rider of the motorcycle viz., Kirankumar. The rider of the motorcycle did not possess valid driving license to ride the motorcycle and did not wear helmet at the time of accident. Therefore, the appellant is not liable to pay any compensation to the 1st respondent. The appellant has also denied the age, avocation, income and nature of injuries sustained by the 1st respondent. In any event, the total compensation claimed by the 1st respondent is excessive and prayed for dismissal of the claim petition.

6. Before the Tribunal, the 1st respondent examined himself as P.W.1 and nine documents were marked as Exs.P1 to P9. The appellant/Transport Corporation examined one Ramamoorthy, the 2nd respondent, the driver of the bus as R.W.1, but did not file any documents to prove their case. The Medical Certificate issued by the Medical Board, Government Hospital, Vellore, was marked as Ex.C1.

7. The Tribunal, considering the pleadings, oral and

documentary evidence, held that the accident occurred due to rash and negligent driving by both the 2nd respondent, the driver of the bus belonging to the appellant/Transport Corporation as well as the rider of the motorcycle, fixed 60 : 40 contributory negligence on the part of the driver of the bus and rider of the motorcycle respectively, awarded a sum of Rs.3,19,516/- (Rs.94,000/- + medical expenses Rs.2,25,516/-) as compensation to the 1st respondent and directed the appellant/Transport Corporation to pay a sum of Rs.2,81,916/- being 60% of the award amount i.e., (Rs.56,400/- + medical expenses Rs.2,25,516/-) as compensation to the 1st respondent and dismissed the claim petition as against the 3rd respondent, insurer of the motorcycle.

8. Against the said award dated 24.10.2018 made in M.C.O.P.No.2 of 2016, the appellant/Transport Corporation has come out with the present appeal.

9. The learned counsel appearing for the appellant/Transport Corporation contended that the accident occurred only due to rash and negligent riding by the rider of the motorcycle, son of the 1st respondent. The rider of the motorcycle came in the opposite direction and dashed against the bus belonging to the appellant. F.I.R. was registered only against the rider of the motorcycle. The Tribunal ought not to have accepted interested witness of P.W.1 and failed to consider that no independent witness was examined on the side of the 1st respondent. The amount awarded by the Tribunal towards medical expenses is not supported by any document. The total compensation awarded by the Tribunal is excessive and prayed for setting aside the award of the Tribunal.

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

11. It is the case of the 1st respondent that while he was travelling as a pillion rider in the motorcycle driven by his son, the 2nd respondent, driver of the bus drove the same in a rash and negligent manner, dashed against the motorcycle and caused the accident. In the accident, the 1st respondent sustained injuries. He has taken treatment in MIOT Hospital, Chennai, as in-patient and filed claim petition claiming compensation for the injuries. In support of his case, he examined himself as P.W.1 and marked F.I.R., which was registered against the rider of the motorcycle as Ex.P1, the judgment in C.C.No.10 of 2015 on the file of the Special Judicial Magistrate's Court, Ranipet, as Ex.P2, final report as Ex.P4, order in CrI.R.P.No.38 of 2014 on the file of II Additional District Court, Vellore @ Ranipet as Ex.P5, certified

xerox copy of F.I.R. in Crime No.326 of 2017 as Ex.P6 and other medical records. It is the contention of the appellant/Transport Corporation that the rider of the motorcycle, which was coming in the opposite direction, rode the same in a rash and negligent manner, dashed against the bus and caused the accident. To substantiate the same, the appellant examined the 2nd respondent, driver of the bus as R.W.1 and relied on F.I.R. registered against the rider of the motorcycle. The Tribunal considering the materials placed before it, place of accident especially the documents Exs.P2, P4 to P6, held that the accident is head on collision at a turning point of over bridge, both the driver of the bus as well as the rider of the motorcycle are responsible for the accident and fixed 60% negligence on the driver of the bus belonging to the appellant and 40% negligence on the rider of the motorcycle in which the 1st respondent travelled as a pillion rider. The Tribunal has given valid reason for the said finding and there is no error warranting interference by this Court.

12.As far as quantum of compensation is concerned, the 1st respondent has produced Ex.P7 medical bills issued by MIOT Hospital, Chennai. The Tribunal considering Ex.P7/medical bills granted a sum of Rs.2,25,516/- towards medical expenses, which is proper. The amounts granted by the Tribunal under different heads are not excessive warranting interference by this Court.

13.In the result, this Civil Miscellaneous Appeal is dismissed and the sum of Rs.3,19,516/- awarded by the Tribunal as compensation to the 1st respondent along with interest and costs is confirmed. The appellant/Transport Corporation is directed to deposit a sum of Rs.2,81,916/- (Rs.56,400/- being 60% of the award amount + medical expenses Rs.2,25,516/-) awarded by the Tribunal 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 1st respondent is permitted to withdraw the amount awarded by the Tribunal along with interest and costs, less the amount if any, already withdrawn. The appeal is dismissed as against the 3rd respondent, insurer of the motorcycle. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar

/TRUE COPY/

Sub-Assistant Registrar

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To
The II Additional District and Sessions Judge
(Motor Accident Claims Tribunal),
Vellore @ Ranipet.

+1cc to Mr.K.J.SIVAKUMAR, ADVOCATE, SR.NO. 3211

C.M.A.No.3742 of 2019
and
C.M.P.No.21468 of 2019
21.01.2021

RSV(CO)
KKN 21.04.2021



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