



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.01.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.NO.1713 OF 2019

Kapildev

.. Appellant/Petitioner

Vs.

The Managing Director,
Tamil Nadu State Transport Corporation,
Villupuram Zone, Villupuram.

.. Respondent/Respondent

Prayer:

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 04.01.2019, made in M.C.O.P. No.198 of 2011, on the file of the Sub Court, (Motor Accident Claims Tribunal) Gingee.

For Appellant : Mr.A.Sathish Kumar
for M/s.C.Thangaraju

For Respondent : Mr.K.J.Sivakumar

J U D G M E N T

The matter is heard through "Video Conferencing".

This appeal has been filed against the dismissal of claim petition by the award dated 04.01.2019, made in M.C.O.P. No.198 of 2011, on the file of the Sub Court, (Motor Accident Claims Tribunal) Gingee.

2.The appellant filed M.C.O.P. No.198 of 2011, on the file of the Sub Court, (Motor Accident Claims Tribunal) Gingee, claiming a sum of Rs.6,00,000/- as compensation for the injuries sustained by him in the accident that took place on 09.10.2011.



3. According to the appellant, on the date of accident, when he was traveling as a pillion rider in a Motorcycle from Raja fort towards Gingee, the driver of the Bus bearing Registration No. TN-25-N-0054 belonging to the respondent-Transport Corporation which was coming from Gingee to Tiruvannamalai, drove the same in a rash and negligent manner and dashed against the appellant and caused the accident. In the accident the appellant suffered multiple and grievous injuries. The accident occurred only due to rash and negligent driving by the driver of the Bus. For the injuries suffered by him, he has filed the claim petition, claiming compensation against the respondent as owner of the offending Bus.

4. The respondent - Transport Corporation filed counter statement and denied all the averments made by the appellant. According to the respondent, while the Bus was proceeding from Chennai to Tiruvannamalai, near Gingee Raja Fort, rider of the Motorcycle in which the appellant traveled as a pillion rider, rode the vehicle in a drunken mode without wearing helmet and dashed against the Bus and caused the accident. The Police after investigation, finding that accident occurred due to negligence of both the vehicles, permitted to ply the Bus in its route. The appellant has to prove that rider of the Motorcycle possessed valid driving license at the time of accident. In any event, the appellant has to prove his age, income and avocation, injuries sustained in the accident, treatment taken for the same, to claim compensation. The total compensation claimed by the appellant is excessive and prayed for dismissal of the claim petition.

5. Before the Tribunal, the appellant examined himself as P.W.1, Dr. Balamurugan was examined as P.W.2 and 8 documents were marked as Exs. P1 to P8. The respondent examined the driver of the Bus as R.W.1 and marked 1 document as Ex. R1.

6. The Tribunal considering the pleadings, oral and documentary evidence, dismissed the claim petition on the ground that the accident did not occur due to negligence of the driver of the Bus belonging to the respondent-Transport Corporation.

7. Challenging the dismissal of claim petition by the award dated 04.01.2019, made in M.C.O.P. No. 198 of 2011, the appellant has come out with the present appeal.

8. The learned counsel appearing for the appellant contended that the Tribunal erred in relying on the evidence of R.W.1/the driver of the Bus and holding that appellant failed to prove that accident occurred only due to rash and negligent driving by driver of the Bus. The Tribunal simply extracted the examination



of appellant in his cross examination and concluded that driver of the Bus was not at fault. The driver of the Bus has stated that Two Wheeler dashed in the side of the Bus in between two doors and he stopped the vehicle after hearing the sound. Had the driver driven the vehicle diligently upon seeing the appellant and another coming in the Two Wheeler from side road, he would have stopped the vehicle well in advance and avoided the accident. The appellant was only a pillion rider. Two vehicles were involved in the accident. The appellant can choose to claim compensation against any one of the tort-feasor and prayed for allowing the appeal.

9.Per contra, Mr.K.J. Sivakumar, learned counsel appearing for the respondent-Transport Corporation contended that the appellant in his cross examination, admitted that Two Wheeler coming from side road to the highways dashed on the side of the Bus in between two doors of the Bus. From this admission and place of impact, it is clear that accident has occurred only due to rash and negligent riding by rider of the Two Wheeler. The Tribunal has considered all the materials on record in proper perspective and dismissed the claim petition. There is no error in the said award of the Tribunal and prayed for dismissal of the appeal.

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

11.It is the case of the appellant that while he was traveling as a pillion rider in the Motorcycle, driver of the Bus drove the same in a rash and negligent manner and dashed against the Motorcycle and caused the accident. In support of his case, he examined himself as P.W.1 and marked FIR as Ex.P1. On the other hand, it is the case of the respondent that rider of the Motorcycle came from side road to the highways in a rash and negligent manner without noticing the on coming traffic in highways, dashed on the side of the Bus in between two doors and caused the accident. To substantiate their case, the driver of the Bus was examined as R.W.1. The appellant as P.W.1, has admitted in the cross examination that accident has occurred when the Motorcycle in which he was traveling as pillion rider, coming from side road dashed on the middle of the Bus in between two doors of the Bus. From this admission, as well as from the evidence of R.W.1/ driver of the Bus that when the Motorcycle entering into the highways, without seeing traffic in the highways, dashed on the side of the Bus coming in the highways in between two doors. The contention of the learned counsel appearing for the appellant that driver of the Bus ought to have seen the side road and stopped the bus for the vehicle coming



from the side road is without merits. Only the person coming from the side lane and entering into the main road must be careful and see the traffic in the main road or highways, before entering. The Tribunal considering all the materials in proper perspective, dismissed the claim petition. There is no error in the finding of the Tribunal warranting interference by this Court.

12. In the result, the appeal is dismissed. No costs.

Sd/-
Assistant Registrar (CS V)

//True Copy//

Sub Assistant Registrar

gsa

To

1. The Subordinate Judge,
(Motor Accident Claims Tribunal),
Gingee.
2. The Section Officer,
V.R Section,
High Court, Madras.

+2cc to M/s.C.Thangaraju, Advocate, S.R.No.1527

C.M.A.No.1713 of 2019

VBA (CO)
CS/31/08/2021