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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.03.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No.983 of 2021

The Manager Director,
Tamil Nadu State Transport Corporation,
Salem,
Salem Division.

.. Appellant/ Respondent

Vs.

1.Manikandan

.. Respondent/Claimant

2.S.Sengodan

3.Branch Manager,
National Insurance Co. Ltd.,
Villupuram.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 24.03.2015, made in M.C.O.P. No.185 of 2011, on the file of the Chief Judicial Magistrate Court, (Motor Accident Claims Tribunal), Villupuram.

For Appellant : Mr.D.Venkatachalam

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 24.03.2015, made in M.C.O.P. No.185 of 2011, on the file of the Chief Judicial Magistrate Court, (Motor Accident Claims Tribunal), Villupuram.

2.The appellant is the 3rd respondent in M.C.O.P. No.185 of 2011, on the file of the Chief Judicial Magistrate Court, (Motor Accident Claims Tribunal), Villupuram. The 1st respondent/claimant filed the said claim petition, claiming a sum of Rs.8,00,000/- as compensation for the injuries sustained by him in the accident that took place on 05.12.2006.

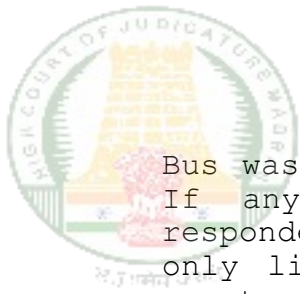


3. According to the 1st respondent, on the date of accident, when he was traveling as a passenger in Venkateswara Bus bearing Registration No. TN-30-W-1383 owned by the 2nd respondent, on Panruti to Salem main road, Anguchettipalayam Village, near Pudu Colony, from West to East towards Cuddalore, the driver of the said Private Bus drove the vehicle in a rash and negligent manner and dashed against the Bus bearing Registration No. TN-30-N-0119 owned by the appellant-Transport Corporation and caused the accident. In the accident, the 1st respondent sustained severe injuries. The accident occurred only due to rash and negligent driving by driver of the Private Bus owned by the 2nd respondent. Hence, the 1st respondent filed the claim petition claiming compensation against the respondents 2 and 3 as owner and insurer of the Private Bus and appellant as owner of the TNSTC Bus involved in the accident.

4. The 2nd respondent, owner of the Private Bus, remained exparte before the Tribunal.

5. The 3rd respondent, insurer of the Private Bus, filed counter statement and denied all the averments made by the 1st respondent in the claim petition. According to the 3rd respondent, on the date of accident, the driver of the Private Bus owned by the 2nd respondent drove the vehicle in a normal speed, adhering the traffic rules and accident occurred only due to rash and negligent driving by driver of the TNSTC Bus owned by the appellant-Transport Corporation. There is delay in filing complaint before the Police and it lacks transparency. The 1st respondent has to prove that at the time of accident, he traveled in the Private Bus and the vehicle possessed vehicular records like Registration Certificate and Permit to ply on the road. The 1st respondent also has to prove his age, avocation and income, injuries sustained and treatment taken to claim compensation. The total compensation claimed by the 1st respondent is excessive and prayed for dismissal of the claim petition.

6. The appellant-Transport Corporation, filed counter statement and denied all the averments made by the 1st respondent in the claim petition. According to the appellant, on the date of accident, when the driver of their Bus drove the vehicle from Cuddalore to Salem cautiously in a normal speed, near Anguchettipalayam Village, the driver of the Private Bus owned by the 2nd respondent came in opposite direction, from West to East in a rash and negligent manner to overtake a Lorry which was proceeding right in front of the said Bus. On seeing this, the driver of the TNSTC Bus stopped the vehicle. While overtaking the Lorry, the Private Bus slipped out of its proportioned left side and dashed against the right side body of the TNSTC Bus and caused the accident. In the accident, the passengers of the both the Buses sustained injuries. The Private



Bus was insured with the 3rd respondent at the time of accident. If any negligence is fastened on the driver of the 2nd respondent's Private Bus, the 3rd respondent-Insurance Company is only liable to pay compensation to the 1st respondent. In any event, the 1st respondent has to prove that at the time of accident, he traveled in the Private Bus. The 1st respondent also has to prove his age, avocation and income, injuries sustained and treatment taken to claim compensation. The total compensation claimed by the 1st respondent is excessive and prayed for dismissal of the claim petition.

7. Before the Tribunal, the 1st respondent examined himself as P.W.1 and marked 8 documents as Exs.P1 to P8. The appellant as well as the 3rd respondent did not let in any oral and documentary evidence.

8. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to negligence of both the drivers of the Private Bus as well as the driver of the TNSTC Bus and apportioned 50:50 negligence on both of them. The Tribunal awarded a sum of Rs.46,000/- and directed the 3rd respondent-Insurance Company as well as the appellant-Transport Corporation to pay 50% of the award amount each, as compensation to the 1st respondent.

9. To set aside the award of the Tribunal dated 24.03.2015, made in M.C.O.P. No.185 of 2011, the appellant - Transport Corporation has come out with the present appeal.

10. The learned counsel appearing for the appellant-Transport Corporation contended that the Tribunal without considering the criminal case and FIR registered against the driver of the Private Bus owned by the 2nd respondent, which shows that the accident occurred only due to rash and negligent driving by driver of the Private Bus, erroneously fixed 50% negligence on the driver of the TNSTC Bus, instead of fixing entire negligence on the driver of the private bus owned by the 2nd respondent. In the absence of any evidence by the 1st respondent to prove his age, avocation and income, the compensation awarded by the Tribunal is excessive and prayed for setting aside the award of the Tribunal.

11. Heard the learned counsel appearing for the appellant-Transport Corporation and perused the materials available on record.

12. It is the case of the 1st respondent that when he was traveling in a Private Bus owned by the 2nd respondent on Panruti to Salem main road, Anguchettipalayam Village, from West to East towards Cuddalore, the driver of the said Private Bus drove the vehicle in a rash and negligent manner and dashed against the TNSTC Bus owned by the appellant-Transport Corporation and



caused the accident. To substantiate this contention, the 1st respondent, examined himself as P.W.1 and marked the FIR registered against the driver of the Private Bus as Ex.P1. On the other hand, it is the contention of the appellant/Transport Corporation that while the driver of their Bus drove the vehicle from Cuddalore to Salem cautiously in a normal speed, near Anguchettipalayam Village, the driver of the Private Bus, coming from opposite direction, while trying to overtake a Lorry, slipped out of its proportioned left side and dashed against the right side body of the TNSTC Bus and caused the accident. The FIR was registered against the driver of the Private Bus. Whereas, the 3rd respondent, insurer of the Private Bus contended that the accident occurred only due to rash and negligent driving by driver of the TNSTC Bus. The appellant-Transport Corporation as well as the 3rd respondent-Insurance Company have not examined any independent witness or even the drivers of both the Buses, to prove their contention. 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. Hence, the Tribunal considering the evidence of P.W.1 eye-witness, contentions in the counter statements filed by the appellant as well as 3rd respondent and failure on the part of the appellant and 3rd respondent to examine any independent eye-witness, held that the accident has occurred due to rash and negligent driving by both the drivers of the Private Bus as well as the TNSTC Bus and directed the appellant as well as the 3rd respondent, each to pay 50% of the compensation to the 1st respondent. There is no error in the said finding of the Tribunal warranting interference by this Court.

13.As far as the quantum of compensation is concerned, from the materials on record, it is seen that in the accident, the 1st respondent sustained severe injuries and fracture. He has taken treatment as in-patient at Government Hospital, Cuddalore from 05.12.2006 to 09.12.2006. He did not file any disability certificate and medical bills to that effect. The Tribunal considering the O.P. Chit and discharge summary marked as Exs.P7 and P8, held that for the injuries sustained in the accident, the 1st respondent would have suffered pain and sufferings and awarded compensation towards pain and sufferings, extra nourishment, transportation to Hospital and medical expenses, which are not excessive. The Tribunal failed to award any amount towards attendant charges and damage to clothes. The total compensation awarded by the Tribunal is not excessive, warranting interference by this Court.

14.In the result, this Civil Miscellaneous Appeal is dismissed and the amount awarded by the Tribunal at Rs.46,000/- 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 as well as the 3rd respondent-



Insurance Company are each directed to deposit 50% of 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.185 of 2011. On such deposit, the 1st 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.

Sd/-
Deputy Registrar(Cj conf)

//True Copy//

Sub Assistant Registrar

gsa

To

1.The Chief Judicial Magistrate,
(Motor Accident Claims Tribunal),
Villupuram.

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

+1 cc to Mr.D.Venkatachalam, Advocate Sr.NO. 18988
C.M.A. No.983 of 2021

SR II(CO)
A.SK(25.10.2021)