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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.06.2021

CORAM:

THE HONOURABLE TMT.JUSTICE S.KANNAMMAL

C.M.A.No.3118 of 2014

Parvathi ... Appellant/1st Respondent

Vs.

1.Sarasu ...1st Respondent/Petitioner

2.M/s.Oriental Insurance Company Limited,
Divisional Office,
T.P. HUB., Parimalam Complex,
Erode District. ... Respondent/2nd Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 13.06.2014 made in M.C.O.P.No.1703 of 2011 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.II, Salem.

For Appellant : Mr.G.Arul Murugan

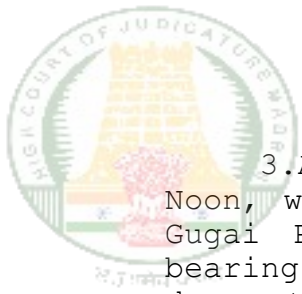
For R2 : Mr.J.Chandran
No appearance for R1

J U D G M E N T

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

This Civil Miscellaneous Appeal has been filed against the award dated 13.06.2014 made in M.C.O.P.No.1703 of 2011 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.II, Salem.

2.The appellant is the 1st respondent in M.C.O.P.No.1703 of 2011 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.II, Salem. The 1st respondent filed the above said claim petition under Section 163(A) of the Motor Vehicles Act, claiming a sum of Rs.3,00,000/- as compensation for the injuries sustained by her in the accident that took place on 08.06.2011.



3. According to 1st respondent, on 08.06.2011 at about 12.00 Noon, while she was pulling the cycle cart near EB Transform at Gugai Palam on the Trichy Main Road, the driver of the bus bearing Registration No. TN 30 AA 6181 belonging to appellant, drove the bus from the same direction in a rash and negligent manner and dashed against the 1st respondent and caused the accident. In the accident, the 1st respondent sustained severe fractures and injuries all over the body. Immediately after the accident, she was taken to Salem Government Hospital for treatment. Therefore, she filed the above said claim petition claiming a sum of Rs.3,00,000/- as compensation for the injuries sustained by her against the appellant and 2nd respondent-Insurance Company, being the owner and insurer of the bus respectively.

4. The appellant being the owner of the bus filed counter statement and denied all the averments made by the 1st respondent. According to the appellant, the 1st respondent only suddenly turned the cycle cart across the road without minding the bus which was coming on the road. Therefore, the accident has occurred only due to the negligence on the part of the 1st respondent and there is no negligence on the part of the driver of the bus. The appellant denied the avocation and income of the 1st respondent. Only, the 2nd respondent-Insurance Company is liable to pay the compensation to the 1st respondent, if any awarded by the Tribunal. The appellant denied the nature of injuries suffered by the 1st respondent and prayed for dismissal of the claim petition as against the appellant.

5. The 2nd respondent-Insurance Company being the insurer of the bus filed separate counter statement and denied all the averments made by the 1st respondent. According to 2nd respondent, the accident has not occurred due to the negligence on the part of the driver of the bus belonging to appellant. The 2nd respondent denied the manner of accident as alleged by the 1st respondent, nature of injuries sustained by her and also the treatment taken by her. At the time of accident, the driver of the bus belonging to 2nd respondent was not possessing valid driving license. The driving license of the driver of the bus was expired on the date of accident. Hence, the 2nd respondent-Insurance Company is not liable to pay any compensation to the 1st respondent and prayed for dismissal of the claim petition as against the 2nd respondent.

6. Before the Tribunal, the 1st respondent examined herself as P.W.1, Dr. Arun was examined as P.W.2 and 12 documents were marked as Exs. P1 to P12. The appellant examined one Kandasamy, driver of the bus as R.W.1 and no document was marked. The 2nd respondent-Insurance Company examined two witnesses as R.W.2 &



R.W.3 and marked the copy of the Insurance Policy as Ex.R1. The driving license of the driver of the bus was marked as Ex.X1.

7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the bus belonging to appellant and directed the 2nd respondent-Insurance Company to pay a sum of Rs.1,51,000/- as compensation to the 1st respondent at the first instance and recover the same from the 2nd respondent.

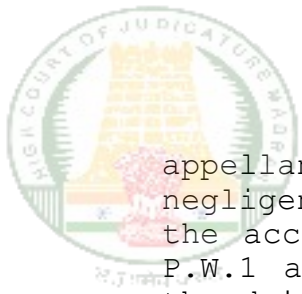
8.To set aside the said award dated 13.06.2014 made in M.C.O.P.No.1703 of 2011, the appellant-owner of the bus has come out with the present appeal.

9.The learned counsel appearing for the appellant contended that the Tribunal erroneously come to the conclusion that the accident has occurred only due to the negligence on the part of the driver of the bus belonging to appellant, when the 1st respondent has suddenly crossed the main road with the push cart and invited the accident. The Tribunal erred in holding that the driver of the bus was not possessing valid driving license at the time of accident. The driver of the bus has valid driving license and also having the badge for driving heavy vehicles valid till 08.01.2011 and the same was renewed which was valid till 2022. The driver of the bus submitted applications for renewal of license within 30 days from the date of expiry and the driving license has been renewed till 2022. There was no contra evidence to prove that the application to renew the license was not submitted within a period of 30 days. Therefore, the award of the Tribunal ordering pay and recovery is erroneous. The 1st respondent did not suffer any injuries in the accident and she was discharged from the Government Hospital on the same day. The 1st respondent has not proved her age, avocation and her income by producing valid documents. The quantum of compensation awarded by the Tribunal is excessive and prayed for allowing the appeal.

10.The learned counsel appearing for the 2nd respondent-Insurance Company made his submissions in support of the award passed by the Tribunal and prayed for dismissal of the appeal.

11.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 2nd respondent-Insurance Company and perused the entire materials on record.

12.From the materials available on record, it is seen that while the 1st respondent was pulling the cycle cart near EB Transform at Gugai Palam on the Trichy Main Road, the driver of the bus bearing Registration No.TN 30 AA 6181 belonging to



appellant, drove the bus from the same direction in a rash and negligent manner and dashed against the 1st respondent and caused the accident. To substantiate the same, she examined himself as P.W.1 and marked F.I.R. as Ex.P1, which was registered against the driver of the bus. On the other hand, it is the case of both the appellant and 2nd respondent-Insurance Company that the 1st respondent only suddenly turned the cycle cart across the road without minding the bus which was coming on the road and invited the accident. Therefore, the accident has occurred only due to the negligence on the part of the 1st respondent and there is no negligence on the part of the driver of the bus belonging to appellant. To prove their case, the driver of the bus was examined as R.W.1. R.W.1 was convicted by imposing fine under Sections 279 & 338 of I.P.C. The appellant or the 2nd respondent-Insurance Company has not examined any eyewitness to substantiate their case that accident has occurred due to the negligence on the part of the 1st respondent. The Tribunal considering the evidence of P.W.1, contents of Ex.P1/F.I.R., Ex.P5/charge sheet and Ex.P6/order copy, held that the accident has occurred only due to the negligence on the part of the driver of the bus belonging to appellant. There is no error in the said finding of the Tribunal.

13.As far as the contention of the learned counsel appearing for the appellant that the driver of the bus has valid driving license and also having the badge for driving heavy vehicles valid till 08.01.2011 and the driver of the bus submitted applications for renewal of license within 30 days from the date of expiry and the driving license has been renewed till 2022 is concerned, R.W.2 has deposed that on the date of accident, i.e., on 08.06.2011, the driver of the bus was not having valid driving license and the driving license of the driver of the bus was expired on 08.01.2011. She further deposed that the driver of the bus has not renewed the driving license within 30 days from the date of expiry and also he has not given any application for renewal of driving license within 30 days from the date of expiry. Further, it is evident from Ex.X1 that the driver of the bus has applied for renewal of driving license only on 13.06.2011 and there was no acceptable evidence to show that the driver of the bus has applied for renewal of driving license within 30 days from the date of expiry. The Tribunal considering the same, directed the 2nd respondent-Insurance Company to pay the compensation to the 1st respondent at the first instance and recover the same from the appellant-owner of the bus.

14.As far as quantum of compensation is concerned, P.W.2/Doctor examined the 1st respondent and certified that the 1st respondent suffered 30% disability and issued Ex.P10/disability certificate to that effect. The Tribunal considering the evidence of P.W.2/Doctor and Ex.P10/disability



certificate, awarded a sum of Rs.60,000/- for 30% disability at the rate of Rs.2,000/- per percentage of disability. The 1st respondent has taken treatment in the Challappa Hospital, Salem as inpatient from 14.06.2011 to 20.06.2011. The Tribunal considering the nature of injuries, period of treatment taken, disability and the medical expenses incurred by her, awarded a sum of Rs.1,51,000/- as compensation to the 1st respondent, which is not excessive warranting interference by this Court.

15.In the result, this Civil Miscellaneous Appeal is dismissed and the compensation awarded by the Tribunal at Rs.1,51,000/- is hereby confirmed together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2nd respondent-Insurance Company is directed to deposit the award amount along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.1703 of 2011 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.II, Salem, at the first instance and recover the same from the appellant. On such deposit, the 1st respondent is permitted to withdraw the award amount, along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Special Subordinate Juge No.II,
Motor Accident Claims Tribunal, Salem.

2.The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mr.G.Arul Murugan, Advocate Sr.29328

C.M.A.No.3118 of 2014

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