



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.893 of 2014

Balan

... Appellant/Petitioner

Vs.

1.V.K.Sekar

2.The Tamil Nadu State Transport Corporation
Limited, Kumbakonam Division,
Trichy.

... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 12.09.2005 made in M.C.O.P.No.681 of 2002 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Namakkal.

For Appellant : Mr.A.Sathishkumar for
Mr.C.Thangaraju

For Respondents : No appearance

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 12.09.2005 made in M.C.O.P.No.681 of 2002 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Namakkal.

2.The appellant is the claimant in M.C.O.P.No.681 of 2002 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Namakkal. He filed the above said claim petition against the respondents, claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in the accident that took place on 01.09.2000.



3. According to the appellant, on 01.09.2000 at 4.00 p.m., while he was riding TVS 50 with one Balamurugan as pillion rider at Alanganatham Pirivu road, Namakkal Taluk, 1st respondent, the driver of the bus bearing Registration No. TN 45 N 1622 belonging to the 2nd respondent, who was coming in the opposite direction, drove the same in a rash and negligent manner, hit against TVS 50, driven by the appellant and caused the accident. In the accident, the appellant and pillion rider sustained injuries. After taking first aid in the Government Hospital, Namakkal, the appellant was admitted in Government Hospital, Salem and has taken treatment as in-patient for 3 days and thereafter, admitted in Aravinth Nursing Home, Namakkal for further treatment and spent a sum of Rs.1 lakh towards medical expenses. The appellant was aged 29 years at the time of accident, he was an agricultural coolie and was earning a sum of Rs.4,000/- per month and claimed a sum of Rs.5,00,000/- as compensation for the injuries sustained by him.

4. The driver of the bus, the first respondent remained ex-parte before the Tribunal.

5. The 2nd respondent has filed counter statement and denied all the averments in the claim petition. According to the 2nd respondent, while 1st respondent after alighting the passengers in the bus stop, slowly taking the bus and was driving in the bent, the appellant who came in the opposite direction in TVS 50 in a zig-zag manner, even after the 1st respondent, the driver of the bus stopped the bus on the left hand side of the road, the appellant dashed on the bus and invited the accident. At the time of accident, the appellant was in inebriated condition. The accident did not occur due to rash and negligent driving by the 1st respondent, the driver of the bus and prayed for dismissal of the claim petition.

6. Before the Tribunal, the appellant examined himself as P.W.1 and examined Dr.K.Mani as P.W.2 and marked 6 documents as Exs.P1 to P6. On the side of the respondents, the driver of the bus was examined as R.W.1 and no documentary evidence was marked.

7. The Tribunal considering the pleadings, oral and documentary evidence, dismissed the claim petition holding that the accident has occurred only due to the negligence of the appellant.



8.Challenging the said order of dismissal dated 12.09.2005 made in M.C.O.P.No.681 of 2002, the appellant has come out with the present appeal.

9.The learned counsel appearing for the appellant contended that the Tribunal failed to see that the 1st respondent, the driver of the bus drove the bus in a rash and negligent manner, dashed on the back side of the TVS 50 and caused the accident. Whether the appellant was riding the TVS 50 or he is a pillion rider, when the accident caused by first respondent and appellant suffered injury, the respondents are liable to pay compensation to him. The 2nd respondent failed to prove that the appellant was in drunken mood at the time of accident. The contents of the First Information Report given by the driver or owner of the offending vehicle will not hold good and finding of the Tribunal fixing negligence on the appellant is only on presumption and assumption and prayed for setting aside the award of the Tribunal and claiming compensation.

10.Though notice has been served on the 1st respondent and his name is printed in the cause list, there is no representation for him either in person or through counsel.

11.Though the 2nd respondent entered appearance through counsel, there is no representation for him, when the matter is taken up for hearing.

12.Heard the learned counsel appearing for the appellant and perused the entire materials on record.

13.From the materials on record, it is seen that in the claim petition, the appellant has stated that while he was riding TVS 50 along with one Balamurugan as pillion rider, the 1st respondent, the driver of the bus belonging to the 2nd respondent, who was coming in the opposite direction, drove the bus in a rash and negligent manner, hit against TVS 50 and caused the accident. In the accident, the appellant sustained injuries. This contention was denied by the 2nd respondent by filing counter statement. It is the case of the 2nd respondent that the accident has occurred only due to rash and negligent riding by the appellant. The appellant as P.W.1 gave up his statement in the claim petition that he was riding TVS 50 at the time of accident and bus was coming in the opposite direction. The appellant contrary to the averments in the claim petition deposed that Balamurugan was riding TVS 50 and the appellant was



a pillion rider. In the grounds of appeal and during the argument before this Court, the appellant has come out with a new case that the 1st respondent dashed TVS 50 from behind. This contradiction clearly shows that the appellant has not approached this Court with clean hands and has not proved that the accident occurred only due to rash and negligent driving by the 1st respondent, the driver of the bus. The Tribunal considering all the materials, dismissed the claim petition by giving cogent and valid reason. There is no error or irregularity in the said order of the learned Judge warranting interference by this Court.

14. In the result, this Civil Miscellaneous Appeal is dismissed. No costs.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

vkr
To

1. The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Namakkal.

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

+1cc to Mr.A.Sathishkumar, Advocate Sr.60556

C.M.A.No.893 of 2014

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srg 09/02/2022