



3. According to appellant, on 26.08.2011, while she was getting down from the bus belonging to respondent-Transport Corporation, the driver of the bus suddenly moved the bus in a rash and negligent manner and due to the same, she fell down and sustained injuries. On the other hand, it is the case of the respondent-Transport Corporation that the driver of the bus started the bus from the bus stand after alighting the passengers and after 200 metres away from the bus stand, the appellant tried to get down from the moving bus through the backside door. In spite of warning given by co-passengers and conductor, the appellant got down from the moving bus, fell down and sustained injuries. The respondent further contended that after investigation, the Police filed the referred charge sheet as 'mistake of fact' before the learned Judicial Magistrate-II, Namakkal. The driver of the bus is not responsible for the accident and hence, the respondent is not liable to pay any compensation to the appellant and prayed for dismissal of the claim petition.

4. Before the Tribunal, the appellant examined herself as P.W.1 and examined Dr. Sivakumar as P.W.2 and marked nine documents as Exs. P1 to P9. The respondent-Transport Corporation examined the driver of the bus as R.W.1 and marked the final report as Ex. R1.

5. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident has occurred only due to negligence of the appellant, she is not entitled to any compensation under Section 166 of the Motor Vehicles Act and dismissed the claim petition to that effect. The Tribunal further held that the appellant has proved that she has sustained grievous injuries and suffered disability, awarded a sum of Rs.25,000/- under Section 140 of the Motor Vehicles Act, directed the respondent-Transport Corporation to pay the said amount to the appellant and allowed the claim petition to that effect.

6. Against the said order dated 31.10.2012 made in M.C.O.P.No.178 of 2011, the appellant has come out with the present appeal.

7. The learned counsel appearing for the appellant contended that the Tribunal erred in fixing negligence on the appellant and granted compensation only under Section 140 of the Motor Vehicles Act. The driver of the bus / R.W.1 is an interested witness and he has not given any complaint against the appellant. Without doing so, his evidence cannot be taken into consideration to fix entire negligence on the appellant. He



further contended that the Tribunal failed to note that Criminal Court proceedings or final report will not bind the Tribunal and made various grounds with regard to nature of injuries, disability and nature of work done by the appellant and quantum of compensation claimed by her and prayed for allowing the appeal.

8.The learned counsel appearing for the respondent-Transport Corporation submitted that though the appellant stated that while she was getting down from the bus, the driver moved the bus in a rash and negligent manner, she has failed to prove the same by examining any other independent witness to prove the negligence on the part of the driver of the bus. The learned counsel appearing for the respondent further submitted that the accident occurred only due to the negligence on the part of the appellant and to prove the same, the respondent examined the driver of the bus as R.W.1 and marked the final report filed by the Police as Ex.R1. The Police after investigation, closed the complaint as 'mistake of fact' and filed final report before the learned Judicial Magistrate No.II, Namakkal. The Tribunal can consider and rely on the final report for corroborate evidence. The evidence of driver of the bus as R.W.1 is corroborated by the final report. The Tribunal considered entire materials and rightly fixed negligence on the part of the appellant and held that appellant is not entitled to compensation under Section 166 of the Motor Vehicles Act. There is no error in the award of the Tribunal and prayed for dismissal of the appeal.

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

10.According to appellant, she sustained injuries in the accident that took place on 26.08.2011 due to the negligence on the part of the driver of the bus belonging to respondent-Transport Corporation. Therefore, she has filed the above said claim petition claiming a sum of Rs.5,00,000/- as compensation against the respondent-Transport Corporation. The appellant in the claim petition stated that while she was about to get down from the bus, the driver of the bus without giving any signal, suddenly moved the bus in a rash and negligent manner before she got down from the bus and due to the negligence of the driver of the bus, she fell down from the bus and sustained injuries. F.I.R. was registered based on the statement given by the appellant before the Mohanur Police Station. According to the appellant, the bus belonging to respondent-Transport Corporation did not stop at Kuthankal Medu bus stop and she informed the



conductor that she has to get down from the bus at Kuthankal Medu bus stop. While so, the bus was slowed down near the Lions Club building and when the appellant was getting down from the bus, the driver of the bus moved the bus and she fell down from the bus. In the proof affidavit filed before the Tribunal, the appellant has stated as per the contents of F.I.R. But, in the cross examination, she has stated that the driver stopped the bus at each and every bus stop for alighting and boarding the passengers. She also deposed that the driver of the bus stopped the bus for alighting the passengers away from the Kuthankal Medu bus stop and before she get down from the bus, the driver of the bus moved the bus. From the deposition of the appellant in her cross examination, it is seen that there is contradiction in the statement of the appellant with regard to manner of the accident. It is the case of the respondent that appellant inspite of warning given by the conductor and co-passengers, got down from the moving bus, fell down and sustained injuries. According to the respondent, the accident has occurred due to negligence of the appellant and not due to the negligence on the part of the driver of the bus. To substantiate their case, the respondent examined the driver of the bus as R.W.1 and marked the final report as Ex.R1. Evidence of R.W.1 is corroborated by the final report. From the final report filed in the typed set of papers, it is seen that the Sub Inspector of Police examined the co-passengers, who traveled along with the appellant in the bus at the time of accident. They gave statement that the appellant was sleeping in the bus and when she was informed about the bus stop, she suddenly got down from the moving bus, fell down and sustained injuries. The final report also states that the bus stopped at Kuthankal Medu bus stop and passengers got down from the bus, but the appellant did not get down from the bus. The final report was filed before the concerned Judicial Magistrate's Court.

11.It is well settled that the contents of F.I.R. and criminal proceedings are not binding on the Tribunal, while deciding the issue of negligence. At the same time, the same can be taken into consideration along with other materials placed before the Tribunal. In the present case, the Tribunal considered the final report along with the evidence of R.W.1, concluded that accident has occurred only due to the negligence on the part of the appellant. The contention of the learned counsel appearing for the appellant that if really the accident has occurred due to the negligence of the appellant, the driver of the bus ought to have given complaint against the appellant is not correct and the same is not acceptable. It is well settled that F.I.R. is starting point for investigation and further proceedings. The



Court must give more importance to the statement given before the Court on oath rather than the contents in F.I.R. In view of the same, not giving complaint by the driver of the bus will not automatically fix the negligence on the part of the driver of the bus. The learned Judge considered entire materials placed before her and held that the appellant is not entitled for compensation under Section 166 of the Motor Vehicles Act and granted compensation only under Section 140 of the Motor Vehicles Act. There is no error in the award of the Tribunal warranting interference by this Court.

12. For the above reasons, this Civil Miscellaneous Appeal is dismissed and the compensation awarded by the Tribunal at Rs.25,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit is hereby confirmed. The respondent-Transport Corporation is directed to deposit the award amount 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, to the credit of M.C.O.P.No.178 of 2011 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Namakkal. On such deposit, the appellant 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(CS-VII)

// True Copy //

Sub Assistant Registrar

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To

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

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



+lcc to Mr.Ma.P.Thangavel, Advocate SR.No.59335
+lcc to Mr.D.Venkatachalm, Advocate SR.No.59307

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C.M.A.No.919 of 2014

KJ(CO)
CB(19/01/2022)