

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.01.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2007 of 2020
and
C.M.P.No.14708 of 2020

The Managing Director
Tamil Nadu State Transport Corporation Ltd.
Railway Station Road
Kumbakonam Town
Thanjavur District.

.. Appellant / Respondent

Vs.

A.Selvi

.. Respondent / Petitioner

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 11.02.2020 made in M.C.O.P.No.64 of 2016 on the file of the Motor Accident Claims Tribunal, Sub Court, Nagapattinam.

For Appellant : Ms.P.Rajathi
for Mr.D.Raghu

J U D G M E N T

This matter is heard through Video-Conferencing.

This Civil Miscellaneous Appeal has been filed by the appellant/Transport Corporation against the award dated 11.02.2020 made in M.C.O.P.No.64 of 2016 on the file of the Motor Accident Claims Tribunal, Sub Court, Nagapattinam.

2.The appellant/Transport Corporation is respondent in M.C.O.P.No.64 of 2016 on the file of the Motor Accident Claims Tribunal, Sub Court, Nagapattinam. The respondent filed the

said claim petition claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by her in the accident that took place on 05.04.2015.

3.According to the respondent, on the date of accident i.e., on 05.04.2015 at about 5.45 p.m., while she was boarding Velankanni bus after returning from Samayapuram Mariamman Temple at Trichy and was sitting on the fifth seat on the right hand side, behind the driver seat from West to East direction, near Kovilvenni E.B. power house, the driver of the bus drove the same in a rash and negligent manner, at that time, the driver of the Mahindra Tourist van, which was coming in the opposite direction, suddenly grazed near the bus belonging to the appellant and caused the accident. In the accident, the respondent sustained grievous injuries all over the body and therefore, filed the above claim petition seeking compensation against the appellant.

4.The appellant/Transport Corporation filed counter statement denying the averments made by the respondent and stated that the accident has occurred only due to rash and negligent driving by the driver of the Mahindra Tourist van and the respondent carelessly put her hand outside the bus inspite of warning by the conductor of the bus. Therefore, the driver of the Mahindra van and respondent alone are responsible for the accident. Immediately, after the accident, the driver of the bus belonging to the appellant has lodged a complaint against the driver of the Mahindra van. The driver, owner and insurer of the Mahindra van were not made as parties to the claim petition. Therefore, the claim petition is bad for non-joinder of necessary parties. In any event, the total compensation claimed by the respondent is excessive and prayed for dismissal of the claim petition.

5.Before the Tribunal, the respondent examined herself as P.W.1, one Revathi was examined as P.W.2 and nine documents were marked as Exs.P1 to P9. The appellant/Transport Corporation examined one Chandran, the driver of the bus as R.W.1 and one Chinnakannu, the conductor of the bus as R.W.2 and did not file any documentary evidence.

6.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to

rash3/02/2014 31/12/2024

75 PADMINI .P 24/03/1971 06/05/1997 15/04/2014 31/03/2029

76 PRABHU .D 10/05/1975 23/11/2004 11/08/20 and negligent driving by the driver of the bus belonging to the appellant/Transport Corporation and directed the appellant/Transport Corporation to pay a sum of Rs.1,39,000/- as compensation to the respondent.

7.Against the said award dated 11.02.2020 made in M.C.O.P.No.64 of 2016, the appellant/Transport Corporation has come out with the present appeal.

8.The learned counsel appearing for the appellant/Transport Corporation contended that at the time of accident, the respondent had carelessly put her hand outside the bus inspite of warning by the conductor of th3/02/2014 31/12/2024 75 PADMINI .P 24/03/1971 06/05/1997 15/04/2014 31/03/2029 76 PRABHU .D 10/05/1975 23/11/2004 11/08/20e bus. The accident did not occur as alleged by the respondent. The driver of the bus is not responsible for the accident. Due to the negligence of the respondent only, the accident has occurred. The Tribunal erroneously fixed negligence on the part of the driver of the bus and liability on the appellant. The total compensation awarded by the Tribunal is excessive and prayed for setting aside the award of the Tribunal.

9.Heard the learned counsel appearing for the appellant/Transport Corporation and perused all the materials available on record.

10.It is the contention of the respondent that while she was travelling in the bus belonging to the appellant/Transport Corporation, the driver of the bus drove the bus in a rash and negligent manner, dashed on the Mahindra van and caused the accident. In the accident, the respondent sustained multiple injuries and she has taken treatment as in-patient in the hospital. To substantiate the same, the respondent examined herself as P.W.1 and marked F.I.R., which was registered against the driver of the bus as Ex.P1. On the other hand, it is the case of the appellant that the respondent put her hand outside the bus inspite of warning by the conductor and she was responsible for the accident. The accident occurred only due to her negligence. The driver of the bus is not responsible for the accident. The appellant examined the driver and conductor of the bus as R.W.1

and R.W.2 respectively. From the award of the Tribunal, it is seen that R.W.2/conductor of the bus has not seen the accident. He deposed that he came to know about the accident only after hearing the sound. R.W.1 deposed that the accident has occurred due to carelessness of the respondent. The appellant or the driver of the bus has not lodged any complaint against the respondent or against the driver of the Mahindra van or given any objection to the F.I.R., which was registered against the driver of the bus. The Tribunal considering the evidence of R.W.1 and R.W.2, did not accept their evidence by giving valid reason and considering the evidence of respondent as P.W.1 and F.I.R., has held that the accident occurred only due to rash and negligent driving by the driver of the bus belonging to the appellant/Transport Corporation. There is no error in the said finding of the Tribunal warranting interference by this Court.

11.As far as quantum of compensation is concerned, the Tribunal considering the nature of injuries, disability and period of treatment taken by the respondent, has awarded compensation under different heads, which is not excessive warranting interference by this Court.

12.In the result, this Civil Miscellaneous Appeal is dismissed and the sum of Rs.1,39,000/- awarded by the Tribunal as compensation to the respondent, along with interest and costs is confirmed. The appellant/Transport Corporation is directed to deposit the entire amount awarded by the Tribunal 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. On such deposit, the respondent is permitted to withdraw the entire amount awarded by the Tribunal along with interest and costs, less the amount if any, already withdrawn. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

The Subordinate Judge
(Motor Accident Claims Tribunal),
Nagapattinam.

+1cc to Mr.D.Raghu, Advocate, S.R.No.1171

C.M.A.No.2007 of 2020 and
C.M.P.No.14708 of 2020

VBA(CO)
SB(31/08/2021)