



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 29.01.2021

Pronounced on : 03.02.2021

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CORAM :

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.614 of 2017

Thirunavukkarasu

...Appellant / Petitioner

/versus/

The Managing Director,
Tamil Nadu State Transport Corporation,
Villupuram Region,
Vellore District.

...Respondent / Respondent

Prayer : Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 17.10.2016 made in M.C.O.P.No.20 of 2015 on the file of the Motor Accidents Claims Tribunal, (Special Subordinate Judge, Tirupattur).

For Appellant : Mr.V.Parivallal

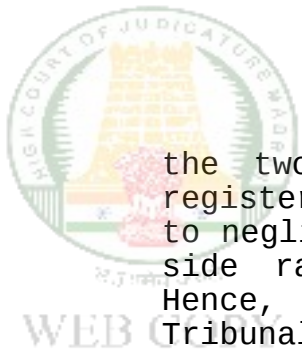
For Respondent : Mr.C.S.K.Sathish

J U D G M E N T

The Appeal by the Motor Accident victim aggrieved by the dismissal of his claim petition by the Motor Accident Tribunal, Tirupattur.

2. The facts of the case is that, on 02.10.2014 at about 4.30 p.m, the appellant while travelling in his two wheeler bearing registration No.TN-23-BW-6851 from Tirupattur to his village, Chinnapallikuppam. Near Sacred Hearts College Tirupattur, the Government bus coming from opposite direction dashed against the claimant's two wheeler. The claimant sustained grievous injury lost his 4 lower teeth and one upper tooth. He was treated at Government Hospital, Tirupattur and later admitted in C.M.C Hospital, Vellore. Immediately, after the accident, he become unconscious and taken to Government Hospital at Tirupattur and then shifted to C.M.C Vellore.

3. Taking advantage of the hospitalisation of the claimant, the driver of the Government Bus has given a false complaint, as if, the accident occurred due to the negligence of



the two wheeler rider i.e., the claimant. Hence, F.I.R was registered against him. However, the accident occurred only due to negligence of the Transport bus driver, who came on the wrong side rash and negligently, dashed against the two wheeler. Hence, claim petition for Rs.5,00,000/- filed before the Tribunal.

4. The Transport Corporation filed counter denying the allegation made against his driver. As per the F.I.R, the claimant along with two others on the pillion rash and negligently tried to negotiate the traffic unmindful of the fact that the Traffic was diverted due to pipe laying work for Hogenakkal drinking water scheme. The claimant riding the two wheeler with two persons on the pillion, lost his balance and dashed against the bus. Since the accident occurred due to negligence of the claimant, the transport corporation is not liable to pay any compensation. The police, after proper investigation has registered the case in Crime No.332 of 2014 as against the two wheeler for offences under Section 279 and 337 of I.P.C. The claimant had no valid driving license and unauthorizedly travelling with two persons on the pillion contrary to motor vehicle rules. Due to the said violation, he lost the balance while rashly negotiating the traffic.

5. Before the Tribunal, 3 witnesses were examined on behalf of the plaintiff and 3 witnesses were examined on behalf of the respondent. 12 Exhibits were marked in support of the claim petition and 3 Exhibits were marked on behalf of the respondent.

6. After considering the evidence, the Tribunal held that the driver of the Transport Corporation is not responsible for the accident. There is ample of proof to show that the accident has happened only due to rash and negligent act of the motor cycle rider, who is the claimant. The Tribunal, taking note of the fact that the claimant has admitted the guilt and paid fine of Rs.1,000/- before the Judicial Magistrate Court, dismissed the claim petition on the ground that the Tortfeasor is not entitled for compensation for the petitioner's own fault.

7. The Learned Counsel appearing for the appellant would submitted that the Tribunal failed to note that the accident victim was forced to plead guilty and paid fine. The photograph of the accident spot marked as Ex.R.3 to show that due to traffic diversion in view of the pipe laying project in progress along the Tirupattur - Vaniyambadi High road, the vehicles were diverted to move on the left side of the road one way. The Transport bus driver failed to drive safely and dashed against the two wheeler. The Tribunal has not properly appreciated the motor Vehicle Inspector report marked as Ex.P.5 and the photograph of the accident site marked as Ex.R.3.

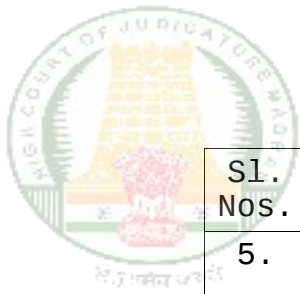


8. The Learned counsel appearing for the Corporation submitted that the Tribunal has properly considered the evidence and rightly observed that the photograph of the accident spot reveals that the motor cycle rider hit upon the bus. The motorcyclist failed to drive his vehicle carefully and slowly. Neglect to notice the bus coming on the opposite side and dashed against the bus.

9. After considering the evidence placed before this Court and the argument of the learned Counsels, this Court finds that the accident has occurred on the road where there was diversion and traffic conjunction. The claimant has violated the motor vehicle traffic rules by carrying two persons on the pillion. The Photograph marked as Ex.R.3 indicates one half of the road is blocked for laying water pipeline and traffic is moving on either side through other half. While the Transport bus stands on the extreme left abiding the traffic rule, the motorcycle hit the bus in the middle of the front side. The photograph speaks for itself. The major contribution for the accident is only from the claimant.

10. The learned Counsel for the appellant would submitted that even if there was any contribution on the part of the appellant, proportionate compensation should be given so that, the accident victim is duly compensated. From the evidence namely wound certificate and the discharge summary indicates that in the accident, the claimant sustained mandible fracture. The doctor, who has clinically examined him and issued disability certificate had opined that the injury has caused him 35% disability. P.W.3 the Doctor working in Ranipet Memorial Hospital has deposed that for treating the injured victim/claimant, they have collected Rs.25,000/- towards the medical charges. Therefore, this Court is of the view that the accident has occurred not solely due to negligence of the motorcyclist/claimant but there is a contribution on the part of the bus driver also which is fixed 50%. Hence, the compensation payable to the claimant is arrived as below:-

Sl. Nos.	Compensation under various heads	Award passed by this Court
1.	Disability 25 % x 3000/-	Rs.75,000/-
2.	Medical Expenses	Rs.25,000/-
3.	Loss of income during the treatment period	Rs.6,000/-
4.	Pain and sufferings	Rs.4,000/-
	Total	1,10,000/-



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Sl. Nos.	Compensation under various heads	Award passed by this Court
5.	50% Deduction towards contribution Negligence	Rs.55,000/-
6.	Compensation payable to the claimant	Rs.55,000/-

11. The respondent/Corporation is directed to pay a sum of Rs.55,000/- with 7.5% interest from the date of filing the petition till the date of realisation. The respondent/Corporation shall deposit the award amount within a period of 12 weeks, from the date of receipt of copy of this judgment. On such deposit, the claimant is entitled to withdraw the same on filing proper application.

12. Accordingly, the Civil Miscellaneous Appeal is Allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Deputy Registrar (CS)

// True Copy //

Sub Assistant Registrar

bsm

To

1.The Motor Accidents Claims Tribunal,
(Special Subordinate Judge, Tirupattur).

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

C.M.A.No.614 of 2017

PA(CO)
RVM(07/09/2021)