



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.01.2021

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A. (MD) No.1084 of 2010

and

M.P. (MD) No.1 of 2010

WEB COPY

The Managing Director
Tamil Nadu State Transport Corporation Ltd.,
Kumbakonam Division
Periyamelaguparai
Trichy-1

... Appellant/Respondent

-VS-

Kamachi

... Respondent/Petitioner

[Respondent declared as major vide
Judgment dated 05.01.2021 made in
MP (MD) NO.1/2010 in CMA (MD).1084/2010)

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the Decree and Judgment of the Motor Accident Claims Tribunal (3rd Additional Subordinate Judge), Trichy, made in M.C.O.P.No.1894 of 2001, dated 27.09.2006.

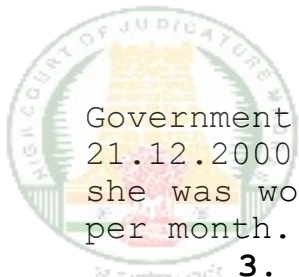
For Appellant : Mr.P.Thilak Kumar

For Respondent : No appearance

J U D G M E N T

This civil miscellaneous appeal has been preferred by the Transport Corporation aggrieved over the Judgment and Award, dated 27.09.2006, passed in M.C.O.P.No.1894 of 2001, by the Motor Accident Claims Tribunal / III Additional Subordinate Judge, Trichy, wherein the Tribunal has awarded Rs.29,250/- along with interest at the rate of 7.5% per annum as against the claim of Rs.2,00,000/-.

2. The facts in brief are that the respondent herein filed a claim petition seeking compensation on the ground that on 18.12.2000, at about 07.00 p.m., while she was walking on Malattaru Bridge, near Srirangam, a Bus bearing registration No.TN45 N0883 belonging to the appellant - Transport Corporation, hit against her. It is alleged by the claimant that the driver drove the Bus in a rash and negligent manner and in the accident, she sustained injuries and fractures and she was immediately taken to Srirangam



Government Hospital, where she took treatment from 18.12.2000 to 21.12.2000 as inpatient. It is further stated by the claimant that she was working as a Representative and thereby, earning Rs.1,500/- per month.

3. In the counter affidavit filed by the appellant - Transport Corporation, the age, income and manner of the accident were denied. It is further stated that though the occurrence is said to have been taken place on 18.12.2000, a complaint was lodged only on 31.01.2001 and hence, the entire claim is false.

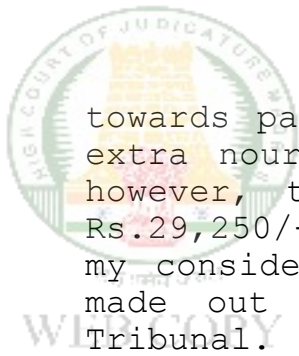
4. To prove the case of the claimant, three witnesses were examined and five documents were marked and on the side of the Transport Corporation, one witness was examined and one document was marked. On appreciation of the evidence adduced by the parties, the Tribunal found that both the claimant and the driver of the Bus were equally responsible for the accident and awarded a compensation accordingly. Aggrieved over the same, the present civil miscellaneous appeal has been filed.

5. Mr.P.Thilak Kumar, learned counsel appearing for the appellant - Transport Corporation, would urge that the award of the Tribunal is arbitrary, excessive and against the weight of evidence. It is further stated that no such occurrence had taken place as projected by the claimant and the the delay in lodging the complaint was not explained by her and hence, the claim petition ought to have been dismissed.

6. Heard the learned counsel appearing for the appellant - Transport Corporation and carefully perused the materials available on record.

7. A perusal of the records would reveal that P.W.2, who was a passenger in the Bus at the time of the accident, lodged a complaint belatedly. He further deposed that after the accident, when he insisted the driver to stop the Bus, the driver scolded him and therefore, he could not lodge the complaint immediately. On the side of the Transport Corporation, either the log-book or the trip-sheet was produced to show that the vehicle did not ply on the road at the time of the accident. Hence, after analyzing the evidence of R.W.1 and P.W.2, the Tribunal found that both the driver and the claimant are equally responsible for the accident.

8. The claimant (P.W.1) has stated that she sustained fracture in the right leg and three fingers were also crushed. Ex.P2 - Wound Certificate shows that the claimant sustained fracture in the right leg. P.W.3 - Dr.V.R.Ravi, after verifying Ex.P5 - X-Ray and examining the claimant, issued Ex.P4 - Disability Certificate certifying that the claimant sustained 36% permanent disability. However, the Tribunal has taken the disability as 31% and awarded Rs.46,500/- for permanent disability; Rs.10,000/-



towards pain and suffering and mental agony and Rs.2,000/- towards extra nourishment and in total, the Tribunal awarded Rs.58,500/-, however, taking 50% towards liability for the accident, awarded Rs.29,250/- along with interest at the rate of 7.5% per annum. In my considered view, the appellant - Transport Corporation has not made out any case to interfere with the Award passed by the Tribunal.

9. The claim petition is of the year 2001 and at that relevant point of time, the respondent was a minor and by now, she should have become major. So, the respondent is declared as major and the Tribunal is hereby directed to disburse her award amount.

10. In fine, the civil miscellaneous appeal is dismissed. In view of the dismissal of the appeal, the appellant - Transport Corporation is directed to deposit their proportionate share (i.e.50%) of the award amount with accrued interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this Judgment. On such deposit, the respondent / claimant is permitted to withdraw the amount (i.e.50% of the award amount), less the amount already withdrawn, if any, together with interest and costs. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the Judgment may be utilized for official purposes, but, ensuring that the copy of the Judgment that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

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To:

1.The III Additional Subordinate Judge,
Motor Accident Claims Tribunal,
Trichy.



2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.(2 Copies)

+1 CC to M/s.P.THILAK KUMAR, Advocate (SR-212[F] dated 06/01/2021)

C.M.A. (MD) No.1084 of 2010

and

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05.01.2021

MA (CO)

NR (05/02/2021) 4P : 4C