



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 22.12.2020

Delivered On : 21.01.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.ILANGO VAN

C.M.A. (MD)No.447 of 2011

and

M.P. (MD)No.1 of 2011

The Managing Director,
Tamil Nadu State Transport Corporation,
Karaikudi Division, Karaikudi,
Sivagangai District.

... Appellant / 1st respondent

Vs.

1.Rajendran

... 1st Respondent / Petitioner

2.National Insurance Company Ltd.,
Represented through its
Divisional Manager,
3-A, North Veli Street,
Madurai - 625 001.

3.Elango
4.Elaveni

... Respondents 2 to 4 /
Respondents 3 to 5

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree passed in M.C.O.P.No.70 of 1999, dated 21.06.2006, on the file of the Motor Accident Claims Tribunal - Chief Judicial Magistrate, Sivagangai.

For Appellant : Mr.M.Prakash
For Respondents : Mr.D.Sivaraman for R2
: Dismissed for R1
: No appearance for R3 & R4

JUDGMENT

This Civil Miscellaneous Appeal is filed against the award, passed in M.C.O.P.No.70 of 1999, dated 21.06.2006, on the file of the Motor Accident Claims Tribunal - Chief Judicial Magistrate, Sivagangai.

2.The case of the claimant before the Tribunal is that the petitioner along with his family members was travelling in a car bearing Registration No.TN-63-B-5000 from Sivagangai to Madurai on



the Sivagangai- Madurai main road, on 24.01.1997. When the car was nearing the place of the occurrence, another vehicle bearing Registration No.TN-63-N-0312, belonging to the respondent Transport Corporation, was driven by its driver in a rash and negligent manner from the opposite direction and hit against the Ambassador Car, as a result of which, the claimant sustained injuries and was taken to Jawahar Hospital, Madurai, where, he underwent treatment as inpatient from 24.01.1997 to 01.02.1997. Even after that, he is treated as outpatient as he suffered multiple injuries and in respect of the occurrence, a case in Crime No.42 of 1997 was registered against the first respondent's Bus driver. The car, in which, the petitioner was travelling along with his family belongs to the deceased second respondent before the Tribunal insured by the third respondent/ Insurance Company. Claiming compensation amount of Rs.1,50,000/-, the petitioner approached the Tribunal.

3.The case of the appellant before the Tribunal is that the driver of the vehicle was driving the same by following the rules. The accident took place only due to the rash and negligent driving on the part of the driver of the Ambassador Car. The contention of the third respondent is that the accident took place only due to the rash and negligent driving on the part of the first respondent vehicle driver.

4.With these pleadings, before the Tribunal, on the side of the claimant, two witnesses were examined as P.W.1 and P.W.2 and eleven documents marked as Ex.P.1 to Ex.P.11. On the side of the respondents, no witness was examined and no document marked.

5.At the conclusion of the enquiry, the Tribunal came to the conclusion that the accident took place only due to the rash and negligent driving on the part of the first respondent's vehicle driver and the liability has to be fastened upon the appellant. Regarding compensation, by taking into account the medical evidence and the treatment documents, Rs.32,000/- was awarded as compensation. Challenging the same, the Transport Corporation preferred this Civil Miscellaneous Appeal.

6.At the time of hearing the Appeal, it was submitted by the parties that in connected cases viz., C.M.A.No.28 of 2002 and C.M.A.(MD)No.393 of 2005, after analysing the evidence, came to a finding that it is the case of composite negligence and the Transport Corporation driver is liable for 75% of negligence and 25% of negligence was fixed upon the second respondent driver. It was also submitted by the parties that there was no further appeal against the judgment of this Court, since there is an alternative finding to that effect by this Court that has to be followed. So, in this case also, I find that the appellant is liable to pay 75%



of the compensation fixed by the Tribunal and the second respondent has to pay 25% of the compensation on behalf of its insured. To this extent, the award passed by the Tribunal is to be modified.

7. Regarding compensation, the petitioner suffered multiple injuries and was taking treatment as inpatient in Jawahar Hospital, Madurai from 24.01.1997 to 01.02.1997. P.W.2 is the Doctor, who examined the claimant for assessing the disability. He would say that due to the accident, there was a haemorrhage on his brain and there is loss of memory and concentration and also there is a decrease in the capacity of vision also. He assessed the same at 39%. After analysing the evidence of P.W.2, the Tribunal found that no documentary evidence has been produced by the claimant, to show that subsequent to the occurrence, he was taking treatment for eye defects. There was no document to show that the decrease of eye sight. Taking into account the head injuries suffered by the claimant, it assessed the disability at 15%. The claimant was working as a Surveyor in the Statistical Department attached to Manamadurai Taluk office. There is no loss of income, since he continued in his job. For 15%, partial permanent disability, Rs.15,000/- was awarded. To this, medical bills and other customary charges, were added. The total compensation is fixed at Rs.32,000/-, which is not excessive in nature. So, the assessment of the quantum is also liable to be confirmed.

8. In the result, this Appeal is partly allowed. The appellant / Transport Corporation is directed to pay 75% of the award amount with interest at the rate of 7.5% p.a., and costs and the second respondent / Insurance Company is directed to pay 25% of the award amount on behalf of the third and fourth respondents with proportionate interest at 7.5% p.a., and costs within a period of two months from the date of receipt of a copy of the order, if the deposit was not already made. On such deposit being made, the claimant is permitted to withdraw the entire award amount along with interest and costs immediately, after filing proper petition before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)



Ls
To

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

2.The Section Officer-2 copies
VR Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.D.SIVARAMAN, Advocate (SR-1900[F] dated 22/01/2021)

order made in
C.M.A. (MD) No.447 of 2011
21.01.2021

KM (15.02.2021) 4P 5C