



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.01.2021

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THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A(MD) No.888 of 2010

and

M.P. (MD) No.2 of 2010

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The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
(Madurai Division-II),
Vannarpettai,
Tirunelveli.

.. Appellant/1st Respondent

vs.

1.Subbiah Nadar

.. Respondent No.1/Petitioner

2.M/s.Rajkumar,

Export Private Ltd.,
No.B.603, Keesan Dugar Apartments,
Kesava Perumalpuram,
Raja Annamalaipuram,
Chennai.

(the 2nd respondent given up since the
owner of the lorry was exparty
before the Tribunal)

3. The Branch Manager,

The Oriental Insurance Company Ltd.,
Soba T.C.S.M.Complex,
Railway Station Road,
Palakadu,
Kerala.

.. Respondents 2 & 3/
Respondents 2 & 3

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988, to set aside the judgment and decree, dated 18.08.2008 in M.C.O.P.No.1662 of 2007 on the file of the Motor Accident Claims Tribunal-Additional District Judge(Fast Track Court No.2), Tirunelveli.

For Appellant : Mr.K.Gokul

For R1 : Dismissed vide Court
Order, dated 16.02.2012

For R2 & R3 : No appearance



J U D G M E N T

This appeal is directed against the judgment and award passed by the Motor Accident Claims Tribunal-Additional District Judge (Fast Track Court No.2), Tirunelveli in M.C.O.P.No.1662 of 2007, dated 18.08.2008.

2. The first respondent herein, namely, Subbiah Nadar filed a claim petition claiming compensation of Rs.2,00,000/-. It is his case that on 10.06.2007 he was travelling in the bus belonging to the appellant-Transport Corporation bearing Registration No.TN-32-N-1240 from Tirunelveli to Tenkasi and when it was proceeding near Pavoorchatram, the vehicle was driven by its driver in a rash and negligent manner and hit against the lorry bearing Registration No.TN-07-AY-7708 belonging to the second respondent and insured with the third respondent. In the impact, he sustained grievous injuries in his head, forearm and other parts of the body. Immediately, he was taken to Government Hospital, Tenkasi and thereafter, he was referred to Tirunelveli Medical College Hospital, where he took treatment as Inpatient for about 15 days. He has further stated that he was 58 years old at the time of accident and he was a milk vendor by profession and he owns agricultural land also and thereby, he was earning a sum of Rs.6,000/- per month. However, in view of the injuries sustained in the accident, he was not able to do his normal work.

3. The claim petition was resisted by the appellant-Transport Corporation contending that the driver of the bus was proceeding in a normal speed, but the lorry was driven by its driver in a rash and negligent manner and it rammed the bus. The claim is excessive and exorbitant.

4. Before the Tribunal, in order to prove the case of the claimant, he examined four witnesses as P.W.1 to P.W.4 and marked 13 documents as Ex.P1 to Ex.P13. On the side of the appellant, no exhibit was marked and one Muthupandi was examined as R.W.1. It is relevant to note that in the same accident, two other persons sustained injuries and all the three cases were taken up together and disposed of by common judgment.

5. On appreciation of evidence adduced by the parties, the Tribunal came to the conclusion that the driver of the bus was negligent and awarded a compensation of Rs.65,000/-. Challenging the same, the present appeal has been filed by the appellant-Transport Corporation.

6. It is the contention of the learned counsel for the appellant that the Tribunal erred in holding that the appellant was negligent in driving the bus and he was responsible for the accident and the evidence of R.W.1 was not properly appreciated by the Tribunal.



7. It is seen from the records that the appeal against the claimant/first respondent was dismissed vide order dated 16.02.2012 and the other respondents have also not chosen to appear to contest the case. Even though, the appeal is liable to be dismissed since no steps was taken to serve notice on the first respondent, this Court, has perused the materials available on record, found that the contention of the appellant is unsustainable.

8. While deciding the negligence, the Tribunal discarded the evidence of R.W.1 after considering Ex.P4-sketch, which shows that the bus was proceeded from East to West direction, but it has gone to the wrong side of the road and hit against the Tanker lorry. R.W.1 has also given inconsistent version. Therefore, the findings on negligence is confirmed.

9. It is to be noted that the claimant had taken treatment as inpatient for about 15 days at Tirunelveli Medical College Hospital. Ex.P2 is the discharge summary. P.W.3-doctor-Poovalingam would state that the claimant sustained injury on his spinal cord and he underwent surgery twice. Even then, there was no flexibility and he could not sit on the floor. The disability was assessed at 25% and Ex.P10 is the disability certificate. The Tribunal after analysing the evidence of P.W.2, Ex.P.10, Ex.P11-X-ray awarded a sum of Rs.50,000/- under the head of permanent disability, Rs.5,000/- for pain and suffering, Rs.5,000/- for medical expenses Rs.5,000/-, Rs.5,000/- for extra nourishment and transportation. Totally, a sum of Rs. 65,000/- was awarded as compensation along with interest at the rate of 7.5% per annum. The award of the Tribunal is reasonable one and the same is confirmed.

10. For the above said reasons, this Civil Miscellaneous Appeal fails and the same is dismissed. The appellant/Transport Corporation is directed to deposit the entire 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 order. On such deposit being made, the first respondent/claimant is permitted to withdraw the award amount by making necessary application before the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

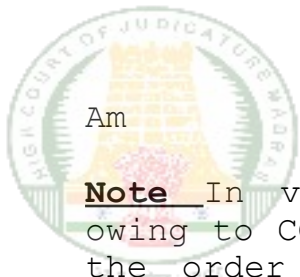
Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)



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

To

- 1.The Motor Accident Claims Tribunal,
Additional District Judge,
(Fast Track Court No.2), Tirunelveli.
- 2.The Record Keeper, (2 copies)
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

JUDGMENT MADE IN
C.M.A(MD) No.888 of 2010
27.01.2021

VB (04.03.2021) 4P 4C