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C.M.A. (MD) Nos. 753 and 754 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 08.09.2021

Delivered On : 25.11.2021

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A. (MD) Nos. 753 and 754 of 2014

The Managing Director,
Tamil Nadu State Transport Corporation,
Periyamilaguparai,
Trichy.

..Appellant in C.M.As.

Vs.

G.Vignesh Kumar

.. Respondent in C.M.A. (MD) No. 753 of 2014

G.Vinoth Kumar

.. Respondent in C.M.A. (MD) No. 754 of 2014

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgment and decree dated 30.10.2013 passed in M.C.O.P.Nos.151 of 2012 and 161 of 2012, respectively, on the file of the Motor Accidents Claims Tribunal/Chief Judicial Magistrate Court, Dindigul.

For Appellant

(in both C.M.As.) : Mr.P.Prabhakaran

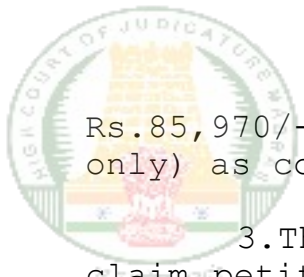
For Respondent

: Mr.P.Jamal Mohamed
(in both C.M.As.) For Mr.A.Arul Janifer

JUDGMENT

These Civil Miscellaneous Appeal have been filed against the award passed in M.C.O.P.Nos.151 of 2012 and 161 of 2012 dated 30.10.2013 respectively, on the file of the Motor Accident Claims Tribunal/Chief Judicial Magistrate, Dindigul.

2.The appellant herein in both the C.M.As., is the respondent and the respondent herein in both C.M.As., are the petitioners in the claim petition. The respondent herein in C.M.A. (MD) No. 753 of 2014 has filed a claim petition in M.C.O.P.Nos.151 of 2012, claiming compensation for the injuries sustained by him, in an accident that took place on 16.04.2012. The Tribunal has awarded a sum of



Rs.85,970/- (Rupees Eighty Five Thousand Nine Hundred and Seventy only) as compensation in M.C.O.P.No.151 of 2012.

3.The respondent in C.M.A.(MD)No.754 of 2014 has filed a claim petition in M.C.O.P.No.161 of 2012, claiming compensation for the injuries sustained by the claimant, in the same accident. The Tribunal has awarded a sum of Rs.16,330/- (Rupees Sixteen Thousand Three Hundred and Thirty only) as compensation in M.C.O.P.No.161 of 2012. Against both the awards, the appellant has preferred these appeals.

4.Brief substance of the claim petition in M.C.O.P.No.151 of 2012 is as follows:

On 16.04.2012, at about 03.00 p.m., the petitioner Vigneshkumar was travelling as a pillion rider in a Hero Honda two wheeler bearing registration No.TN-57-AA-4590, along the Kodaikonal to Batlagundu hill road near Nandagarai Keelvalaivu mile stone 15/8. At the time, a bus bearing registration No.TN-45-N-3276 that belong to the respondent came from the opposite direction in a rash and negligent manner dashed against the petitioner's vehicle. Both the petitioner and the rider of the vehicle sustained multiple injuries. The petitioner claimed a sum of Rs.5,00,000/- (Rupees Five Lakhs only) as compensation.

5.Brief substance of the claim petition in M.C.O.P.No.161 of 2012 is as follows:

The petitioner Vinothkumar was riding a two wheeler and a TNSETC bus came in a rash and negligent manner dashed against the two wheeler. The petitioner sustained injuries. The petitioner claimed a sum of Rs.5,00,000/- (Rupees Five Lakhs only) as compensation.

6.Brief substance of both the counters filed by the respondent therein is as follows:

On 16.04.2012, the respondent bus was driven by its driver in a careful and cautious manner observing the principles of hill traffic. The bus was proceeding uphill, managing a lot of sharp curves and the respondent driver drove the bus in a very slow manner. Near the mile stone 15/8, the respondent noticed that a motorcycle with a pillion rider was coming downhill in a rash and negligent manner. The respondent bus driver blew the horn and gave on and off light signal and moved the bus to the extreme left and stopped the bus. The motorcyclist rode the motorcycle rashly and due to that, he lost his balance when applying sudden brake the motorcycle skidded and dashed against the front portion of the bus which was stopped on the left side of the road.

The driver of the bus is no way responsible for the accident. The respondent is not liable to pay any compensation. It was the motorcyclist who was coming down hill, drove the motorcycle in a



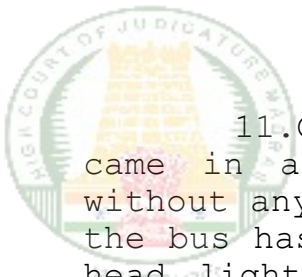
rash and negligent manner and dashed against the stationed vehicle. Though FIR was registered against the bus driver, after detailed investigation, the police impleaded the name of the rider of the two wheeler as an accused. The motorcyclist did not possess valid driving licence. The owner of the two wheeler and insurer are to be included as parties. The petition has to be dismissed for non joinder of necessary parties. The nature of injuries, period of treatment, treatment expenses are all denied and the claim is excessive.

7. On the side of the petitioner, three witnesses were examined and 11 documents were marked. On the side of the respondent therein, one witness was examined and no document was marked. Court witness, C.W.1 was examined and Court document was marked as Ex.C1. After trial, the Tribunal has awarded a sum of Rs.85,970/- (Rupees Eighty Five Thousand Nine Hundred and Seventy only) in M.C.O.P.No.151 of 2012 as compensation. The Tribunal has awarded a sum of Rs.16,330/- (Rupees Sixteen Thousand Three Hundred and Thirty only) in M.C.O.P.No.161 of 2012 as compensation. Against which, the appellant has preferred these Civil Miscellaneous Appeals.

8. Both the cases arose out of the same accident and a common award was passed by the Tribunal. Hence, C.M.A. (MD) No. 753 of 2014 is taken as the lead case.

9. On the side of the appellant, it is stated that for permanent disability of 30%, an award of Rs.85,970/- (Rupees Eighty Five Thousand Nine Hundred and Seventy only) is excessive. The award towards medical expenses, pain and suffering, extra nourishment, loss of amenities are all high. The Tribunal has failed to fix contributory negligence on the rider of the motorcycle. The Tribunal failed to note that it was the motorcyclist, who drove the vehicle in a rash and negligent manner. The Tribunal failed to consider that the FIR was altered and the motorcyclist was named as the accused. The reliability of the evidence is questionable. Only based on oral evidence, the Tribunal has fixed the entire liability on the bus driver and prayed the award to be set aside.

10. On the side of the appellant, it is stated that FIR was registered against the bus driver. After investigation, the police altered the FIR against the rider of the two wheeler. In a hilly area, when the bus was driven upwards, there is no possibility for a heavy vehicle to be rash or negligent. The Police Officer was examined as Court witness. The alteration report was marked as Ex.X1. Ex.X1 is sufficient enough to fix negligence on the part of the rider of the motorcycle. In support of this contention, a judgment of this Court in the case of **New India Assurance Co. Ltd. v. Pazhaniammal and others** reported in **2012 ACJ 1370** is cited.



11. On the side of the respondent, it is stated that the bus came in a rash and negligent manner without blowing the horn, without any signal and dashed against the two wheeler. The driver of the bus has deposed that he gave signal by switching on and off the head lights. He does not deposed that he blow the horn and the negligence is only on the part of the bus driver. The bus driver ought to have blown the horn, while travelling upward in a hilly area.

12. A perusal of the records reveals that though FIR was registered against the bus driver, subsequently after investigation, the same was altered against the rider of the motorcycle. The rider of the motorcycle is the claimant in M.C.O.P.No.161 of 2012. No independent witness was examined by the claimant to prove the negligence. R.W.1 has deposed that it was the two wheeler, which was rash and negligent. C.W.1 has deposed that FIR was registered against the bus driver but was subsequently altered against the rider of the two wheeler.

13. In the above circumstances, the Tribunal is wrong in fixing the negligence entirely on the bus driver. There is lesser possibility for a loaded heavy vehicle moving upward in a hilly area to be rash. There is possibility for the two wheeler which came downhill to be rash. But the motorcyclist, owner, insurer are not parties in the case. The contribution of negligence on the part of the rider of the two wheeler cannot be decided without impleading him as respondent. Hence, the award of the Tribunal passed in M.C.O.P.No.151 of 2012 is set aside and the case is remitted back to the Tribunal for impleading the rider, owner and insurer of the two wheeler as parties and for fresh trial and disposal in accordance with law.

14. Since C.M.A. (MD) No. 754 of 2014 is a connected case arising out of the very same accident, the award of the Tribunal passed in M.C.O.P.No.161 of 2012 is set aside. The case is remanded back to the Tribunal for fresh trial and disposal in accordance with law. In view of the above, these Civil Miscellaneous Appeals are **disposed of accordingly**.

Sd/-

Assistant Registrar (CS-III)

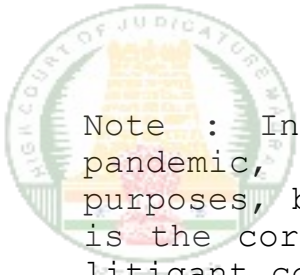
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Sub Assistant Registrar (CS)

Mrn

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To

1. The Chief Judicial Magistrate,
Motor Accidents Claims Tribunal,
Dindigul.
2. The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+2 CC to M/s.P. PRABHAKARAN, Advocate (SR-35792[F] dated 25/11/2021)