

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	20.01.2021
Date of Judgment	23.03.2021

CORAM

THE HONOURABLE MRS. JUSTICE T. KRISHNAVALLICMA (MD) No. 1332 of 2015andMP (MD) No. 2 of 2015

WEB COPY

The Managing Director,
Tamil Nadu State Transport Corporation Limited,
(Madurai Division No.V),
Virudhunagar.

: Appellant/Respondent

Vs.

Solaisamy

: Respondent/Petitioner

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award, dated 17.09.2013 made in MCOP No.101 of 2012 on the file of the Motor Accident Claims Tribunal (Sub Court), Virudhunagar.

For Appellant
For Respondent

: Mr.P.Prabhakaran
: Mr.N.Padmaboopathi

J U D G M E N T

The Appellant Transport Corporation has preferred this appeal challenging the award, dated 17.09.2013 made in MCOP No.101 of 2012 on the file of the Motor Accident Claims Tribunal (Sub Court), Virudhunagar.

2.The brief facts of the case is that on 11.03.2011 at about 8.55 am, when the claimant was getting into the Corporation Bus TN-67-N-0495 to go to Srivilliputhur, the driver of the Bus suddenly started the Bus in a rash and negligent manner without noticing the passengers and caused the claimant to fell down from the Bus. Due to it, the wheel of the Bus ran over the claimant's left leg and thereby, he sustained crushing injury on his left leg and left foot. The claimant was initially taking treatment at Sri Ram Hospital, Sivakasi and subsequently, taking treatment in Ganga Medical Centre and Hospital Private Limited, Coimbatore. The claimant filed a claim petition in MCOP No.101 of 2012 before the tribunal seeking compensation of Rs.10,00,000/- for the injuries sustained by him in the accident.

3.Before the Tribunal, on the side of the claimant, 2 witnesses were examined and marked Exs.P1 to P10. On the side of the Transport Corporation, 2 witnesses were examined and marked Exs.R1 to R13. The Tribunal, after considering the oral and documentary evidence adduced by the parties, came to the conclusion that the driver of the Bus was responsible for the accident and awarded



compensation of Rs.3,00,000/- together with interest @ 7.5% p.a.

4. Heard both sides and perused the materials available on record.

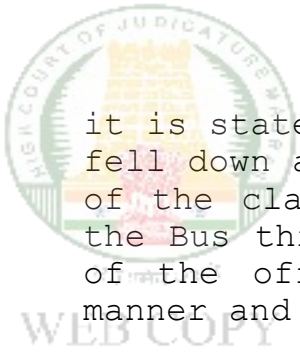
5. The learned counsel appearing for the appellant/respondent submitted that the claimant filed the false case by way of misusing the injuries sustained by him in some other manner and more-over, the FIR filed against the Bus driver has been closed as "Mistake of Fact" and the final report filed by the police has been accepted by the Judicial Magistrate, Sivakasi, which shows the non-involvement of the Transport Corporation Bus in the alleged accident and hence, the appellant Transport Corporation is not at all liable to pay any compensation to the claimant in anyway. But the tribunal wrongly fixed the entire responsibility on the driver of the Bus and the award passed by the tribunal is on the higher side and prays that the Civil Miscellaneous Appeal has to be allowed.

6. On the other hand, it is argued on the side of the respondent/claimant that due to the injuries sustained by the claimant in the alleged accident, it is not possible for him to give the complaint and he gave the complaint, after discharge from the hospital and the accident occurred only due to the rash and negligent driving of the driver of the Bus and hence, the appellant/respondent is liable to pay compensation and prays that the Civil Miscellaneous Appeal may be dismissed.

7. In this case, FIR was registered as against the driver of the appellant Transport Corporation Bus. But the case was closed as "Mistake of Fact." To prove the above fact, the Conductor and Driver of the Bus was examined as RW1 and RW2. RW1 stated that their Bus was not involved in this case and further, the criminal case registered against him was closed as "Mistake of Fact."

8. The main contention of the appellant/respondent is that the Bus was not involved in the accident. To prove it, Exs.R12 and R13 were produced. Ex.R13 is a certificate given by the Branch Manager, Sattur. But the above Branch Manger was not examined to prove the same.

9. To prove Exs.R12 and R13, no relevant records were produced on the side of the appellant/respondent. Further, on the side of the appellant/respondent filed some 161(3) statement of witnesses to prove that there was no such accident occurred as alleged and the above 161(3) statement of the witnesses were marked as Exs.R2 to R10. To prove Exs.R2 to R10 except the driver and conductor of the bus, all other persons, who gave 161(3) were not examined as witnesses. On perusal of Exs.R2 to R10, the Driver and Conductor of the offending vehicle gave 161(3) statement before the police. On perusal of their 161(3) statement, it is stated that there was no occurrence. But on perusal of the 161(3) statement of one Devaraj,



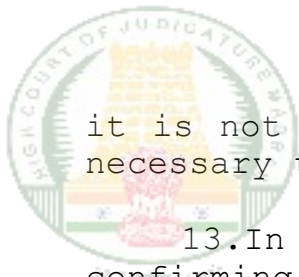
it is stated that when the injured attempted to get into the Bus, he fell down and sustained injuries. On perusal of the 161(3) statement of the claimant, it was stated that when the injured boarded into the Bus through the front entrance at Sivakasi Bus stop, the driver of the offending vehicle drove the Bus in a rash and negligent manner and due to it, the injured fell down and sustained injury.

10. On perusal of the 161(3) statement of the witnesses, it reveals that the place of occurrence was shown as Sivakasi Bus stop. In this case, only the Driver and Conductor alone were examined as RW1 and RW2 on the side of the appellant/respondent. No passengers, who travelled in the appellant/respondent bus was examined to prove that no such accident has occurred. RW1 and RW2 are the interested witnesses. No official witness was examined to prove that the vehicle was running the day without any interruption. Hence, without examining the official of the offending vehicle and production of the documents to prove that the vehicle was running through out, the argument put forth on the side of the appellant/respondent stating that the vehicle was not involved in the accident is not at all acceptable.

11. In this case, PW2 the eye witness categorically stated that only due to the rash and negligent driving of the appellant/respondent driver, the accident took place. At this juncture, it is necessary to refer the cross examination of PW2, which would run thus:-

“விபத்து நடந்தவுடன் மனுதாரர் சோலைச் சாமியை நான் பஸ்ஸின் ஓட்டுநர் நடத்துநர் சேர்ந்து கொண்டு போய் மருத்துவமனையில் சேர்த்தோம் என்றால் சரி தான் அந்த பேருந்தின் ஓட்டுநர் நடத்துநர் மதியம் 2 மணிவரை மருத்துவமனையில் இருந்தார்கள் அப்போது அந்த பேருந்து ஓடாமல் ஓரம் கட்டப்பட்டது.”

12. Further, the Doctor, who gave treatment to the injured also admitted that only due to the road accident and when the bus climbed over the body of the injured, it is possible for the injured to sustain such type of injuries. It is to be noted that the final report of a criminal case will not bind motor accident case. The learned counsel appearing for the appellant/respondent, while cross examining PW2, he put a question that only RW1 and RW2 admitted the injured in the hospital and wait for two hours in the hospital, for that RW2 admitted the same. Hence, it reveals that on the side of the appellant/respondent itself admitted that the injured admitted by PW2, RW1 and RW2 and RW1 and RW2 wait upto 2 pm in the above hospital. No explanation was given on the side of the appellant/respondent, why RW1 and RW2 admitted the injured even though there was no occurrence taken place. Hence, it reveals that the accident occurred as alleged by PW1 and PW2 and only due to it, RW1 and RW2 admitted the injured in the hospital. Hence, it is held that only in the road accident, the injured sustained injuries. The learned counsel for the appellant/respondent has correctly come to the conclusion that the accident occurred due to the rash and negligent driving of the driver of the bus. In so far as the quantum awarded by the tribunal,



it is not excessive and it is a reasonable one. Hence, it is not necessary to interfere with the finding of the tribunal.

13. In the result, this Civil Miscellaneous Appeal is **dismissed**, confirming the award of the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (T&P)

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Sub Assistant Registrar (CS)

To,

1. The Subordinate Judge,
The Motor Accident Claims Tribunal/Sub Court
Virudhunagar.

2. The Record Keeper, V.R Section
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.P.PRABHAKARAN, Advocate (SR-12927[F] dated
23/03/2021)

CMA (MD) No.1332 of 2015
23.03.2021

KB(28.04.2021) 4P 5C