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C.M.A.No.2549 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.04.2023

CORAM

THE HON'BLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No.2549 of 2011

Parvathy

... Appellant

..Vs..

The Managing Director
Tamilnadu State Transport Corporation
Bharathipuram
Dharmapuri-5
Now at
Ramakrishna Road,
Salem – 7
Respondent

...

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 23.06.2011 made in M.C.O.P.No.561 of 2008 on the file of the Motor Accident Claims Tribunal (Additional Sub Court) Krishnagiri)

For Appellant : Mr.P.Mani

For Respondent : Mr.D.Raghu

JUDGMENT

This Civil Miscellaneous Appeal has been preferred against the award and decree dated 23.06.2011 made in M.C.O.P.No.561 of 2008 on the file of the Motor Accident Claims Tribunal (Additional Sub-Court)



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Krishnagiri).

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2. The case of the appellant is that on 09.11.2007 at about 12.30 hours, the appellant was travelling in a Government Bus bearing Regn.No.TN-29-N-1853 from Nallampalli to Salem along with one Chellammal, sitting on the back seat of the said bus. When the bus was proceeding near to Thombaragampatty in Nallampalli to Salem Road, the driver of the said bus belonging to the respondent, drive the same in a rash and negligent manner, dashed against the dig in the road, due to which, the appellant and one Chellammal fell down from the back seat and sustained injuries. The accident had occurred only due to the rash and negligent driving of the driver of the bus. Claiming compensation of a sum of Rs.3,00,000/-, the appellant/claimant has filed a petition in MCOP.No.561 of 2008 before the Motor Accidents Claims Tribunal, Krishnagiri.

3. Controverting the same, the respondent/Transport Corporation has filed a counter affidavit denying the allegations made by the appellant. The



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Transport Corporation denied the occurrence of the accident. The claimant has stated that the accident took place on 09.11.2007, but she lodged the complaint only on 17.12.2007, The police authorities has also filed an FIR against the respondent on the false complaint made by the appellant. The appellant has purposely filed the claim petition for seeking compensation from the Transport Corporation. The appellant ought to prove her entitlement to get the compensation from this Corporation and also clearly vouch that he did not have any separate application before any other claim Tribunal other than the court. He denied the allegations denying the age occupation and income of the appellant and the appellant has not filed any documentary evidence to prove the same and thus he sought for dismissal of the claim petition.

4. Before the Tribunal, on the side of the appellant, two witnesses were examined as P.W.1 and P.W.2 and four documents were marked as Exs.P1 to P4. On the side of the respondent / Transport Corporation, two witnesses were examined as R.W.1 to R.W.2. However, no document was filed.



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5. The Tribunal, after examining the witnesses and analyzing the materials available on record, has dismissed the claim petition.

6. Being aggrieved against the same, the appellant / claimant has filed the present Civil Miscellaneous Appeal.

7. Heard the submissions made on either side and perused the materials available on record.

8. The learned counsel for the appellant / claimant has submitted that the Tribunal ought to have allowed the claim petition on the evidences adduced by the claimant. He further submitted that the Tribunal erred in law in dismissing the claim petition as if the claimant failed to prove the accident without considering the oral and documentary evidence adduced by the claimant. It erred in accepting the evidence of the driver RW1 and the evidence of RW2 and holding that the accident did not occur as if the FIR has been closed as mistake of fact without there being any documentary



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evidence. It ought to have rejected the interested testimony of the driver of the bus. It ought to have rejected the evidence of RW2 police constable as he gave evidence without producing the necessary records relating to the closure of the FIR as mistake of fact and the statement of witnesses recorded before closing the FIR as mistake of fact. It ought to have accepted the evidence of PW1 as well as Exs.P1 to P4 and ought to have held that the claimant sustained injuries due to the accident caused by the rash and negligent driving of the driver of the bus in which the claimant travelled. It ought to have considered the fact that the driver of the bus newly joined the respondent Corporation and caused the accident within a few months and in order to safeguard his job, he gave false evidence and ought to have rejected his case. The Judgment and award passed by the Tribunal below is unsustainable in law and on fact and the same are liable to be set aside and just and reasonable compensation may be awarded to the claimant. Hence, he prays to allow the Civil Miscellaneous Appeal.

9. The learned counsel for the respondent / Transport Corporation has submitted that the Tribunal has rightly considered the materials



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and evidences and has dismissed the petition and hence, the same does not require any interference by this Court. Hence, he prays for dismissal of the Civil Miscellaneous Appeal.

10. The Tribunal adjudicated the issues with reference to the documents and evidences. The Tribunal made a clear finding that the occurrence of accident itself is not proved. According to the deposition of R.W.1, there was no such mishap ever occurred in the said bus on 09.11.2007. The oral and documentary evidence does not corroborate with the deposition of the claimant. The Tribunal relying on the Ex.P1 to Ex,P4 held that there is no proof for the occurrence of the accident. Hence, the respondent / Transport Corporation is not liable to pay any compensation to the appellant.

11. A perusal of the records would reveal that the accident occurred on 09.11.2007 whereas the complaint was lodged only on 17.12.2007. Moreover the respondent had also examined the Head Constable of the said Thoppur Police Station who deposed that the case was closed as 'mistake of



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fact' and notified to the Judicial Magistrate to Dharmapuri on 27.02.2008.

The delay in the lodging of the FIR as well as the fact that the closure of case casts a heavy suspicion as to the very happening of the accident. Thus the burden of proof shifts to the appellant to overcome the oral testimony of RW1 and RW2. The appellant loses the case when the initial proof of the appellant is rebutted by the respondent. The reasonable doubts raised by the respondent are not also clarified by the appellant.

12. Considering the facts and circumstances of the case and upon perusing the records, the Tribunal has rightly dismissed the claim petition. Therefore, this Court is not inclined to interfere with the order passed by the Tribunal.

13. In view of the above, the Civil Miscellaneous Appeal is dismissed.

No costs.

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Index : Yes/No
Internet : Yes/No

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Speaking / Non-speaking order
gv

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A.A.NAKKIRAN., J.

gv

To

1. The Motor Accident Claims Tribunal
(Additional Sub Court) Krishnagiri)
2. The Section Officer,
High Court, Madras.

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