



WEB COPY



C.M.A.No.2191 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.02.2023

CORAM

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

C.M.A.No.2191 of 2018

J.Karthik

..Appellant

Vs.

The Managing Director,
Metropolitan Transport Corporation Ltd.,
Pallavan Salai,
Chennai – 2.

..Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgment and decree dated 14.07.2017 made in MCOP.No.246 of 2012 on the file of the Motor Accident Claims Tribunal (II Additional District Court) Poonamallee.

For Appellant : Mr.K.Varadha Kamaraj

For Respondent : Mr.S.Sivakumar

J U D G M E N T

This appeal has been filed by the appellant/claimant to set aside the impugned award dated 14.07.2017 passed in MCOP.No.246 of 2012 on the file of the Motor Accident Claims Tribunal (II Additional District Court) Poonamallee.

1/7



C.M.A.No.2191 of 2018

2. The brief facts of the case are as follows:

WEB COPY

The appellant had filed the above claim petition seeking compensation of a sum of Rs.2,50,000/- for the injuries sustained by him in a road accident on 08.12.2011. It is the case of the appellant that on the said date, about 04.30 p.m., when the claimant was travelling on the foot board in a MTC bus bearing Registration No.TN-01-N-7852, the driver of the bus applied brake and the appellant fell down and sustained grievous injuries. Due to the said impact, he had sustained injuries, fracture in the Hip and multiple injuries all over the body and his dresses also damaged. Later, he was immediately admitted in the Government Hospital, Thiruvallur.

3. The learned counsel for the appellant has submitted that the Tribunal erred in observing that there is no negligence on the side of the respondent on the basis of evidence of driver of the bus RW1. He further submitted that the Tribunal failed to appreciate the counter statement of



C.M.A.No.2191 of 2018

the respondent that he admitted that the right rear side of the bus hit the stationary vehicle and the claimant fell down from the bus. It ought to have fixed entire negligence on the side of the bus driver. He further submitted that the appellant is a student aged about 15 years at the time of accident. He further submitted that as per rulings of the Apex court, negligence cannot be fixed on the side of minor because the claimant is a minor. The driver of the bus drove the vehicle in a rash and negligent manner and caused the said accident. He further submitted that the Tribunal has not properly decided the negligence aspect.

4. The learned counsel for the respondent submitted that they denied the age and nature of injuries sustained by the appellant. The Tribunal has appreciated all the aspects in a proper manner and came to the conclusion that no interference of this court is required in this case. He further submitted that they are not liable to compensate the appellant. He further submitted that the perusal of PW1/FIR reveals that the injured



C.M.A.No.2191 of 2018

was travelling on the rear foot board by hanging manner and hit the stationed tractor. The eye witness proved that he has violated the traffic rules that 'do not travel on the foot board' and the evidence of PW1 /FIR also clearly showed the negligence on the appellant. Therefore, the appellant being a tortfeasor was not entitled to be compensated by the Insurance Company. Therefore, the Tribunal has rejected the claim. Hence, he prays for dismissal of the appeal.

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

6. The Tribunal after considering the evidence on record held that the appellant who travelled as a foot board passenger is solely responsible for the accident and the respondent is not liable to pay any compensation to the injured.

7. On perusal of records, this court is of the considered opinion



C.M.A.No.2191 of 2018

that this matter requires fresh adjudication in respect of negligence point.

Hence, in order to give opportunity to both the parties, this case is remanded back to the Tribunal for fresh adjudication to decide the negligence. Thus, the Tribunal is directed to give opportunity to both the parties for recording evidence once again, fresh adjudication and dispose of the case on merits. The Tribunal has to complete the entire exercise as expeditiously as possible, preferably, within a period of three months from the date of this judgment.

8. In the result, this Civil Miscellaneous Appeal is allowed. The award of the Tribunal made in MCOP.No.246 of 2012 dated 14.07.2017 on the file of the Motor Accident Claims Tribunal (II Additional District Court) Poonamallee, is set aside. No costs.

14.02.2023

Index: Yes/No
Internet: Yes/No
Speaking order/Non-Speaking Order

5/7



C.M.A.No.2191 of 2018

gv

Note:

The Registry is directed to send the papers immediately to the lower court.

A.A.NAKKIRAN.,J.

gv

To

1. The Motor Accident Claims Tribunal
(II Additional District Court) Poonamallee.
2. The Section Officer,
V.R.Section,
High Court, Madras.

C.M.A.No.2191 of 2018



WEB COPY



C.M.A.No.2191 of 2018

14.02.2023