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CMA No.1393 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.09.2023

CORAM

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Civil Miscellaneous Appeal No. 1393 of 2022

1.Smt. V.Vijaya

2.V.Vazhmuniyan

... Appellants

Versus

The Managing Director,

Tamil Nadu State Transport Corporation Limited,

Division-III, No.1,2, Sheikpet Nadu Street,

Kanchipuram.

... Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 09.09.2021 made in M.C.O.P. No.58 of 2009 on the file of the Motor Accidents Claims Tribunal, Additional Subordinate Judge (FAC), at Kanchipuram.

For Appellant : Mr.K.Suryanarayanan

For Respondents : Mrs.S.Shanthakumari

JUDGMENT

The claimants have preferred the instant appeal challenging the order of the tribunal, dismissing the claim petition.



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2. The claimants/appellants filed the claim petition seeking compensation stating that on 12.09.2008 at about 8.45pm, when the deceased was travelling in the Government Bus, Route No.T34, belonging to the respondent-Corporation, and was proceeding from Uthiramerur to Kancheepuram, the driver of the bus drove the bus in a rash and negligent manner and applied sudden break, as a result of which, the deceased was thrown away from the bus and sustained grievous injuries and succumbed to the injuries on the next day i.e.13.09.2008.

3. The respondent-Corporation filed the counter denying the averments made in the claim petition, stating that the FIR was registered two days after the alleged accident; and that if any such accident had happened as alleged by the claimants, the passengers and crew members of the bus would have reported the same to the police and that therefore, the respondent Corporation is not liable to pay compensation; and that in any case, the compensation claimed is excessive and prayed for dismissal of the claim petition.



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4. The appellants examined PW1 and PW2 and marked Ex.P1 to Ex.P7. The respondent-Corporation marked Ex.R1 and Ex.R2 and did not examine any witness

5. The tribunal after taking into consideration the oral and documentary evidence held that the appellants had not established that the accident took place in the manner alleged by them and dismissed the claim petition.

6. The learned counsel for the appellants submitted that the appellants had originally filed a claim petition in MCOP No.58 of 2009 and the same was dismissed on 28.01.2013. Thereafter, the appellants preferred an appeal before this Court in CMA No.209 of 2014 and this Court by order dated 28.11.2019 had set aside the order of the tribunal and remitted back the matter to the tribunal with the direction to the respondent-Corporation to file the trip sheet of the bus.



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7. The learned counsel further submitted that even after the matter was remitted back to the tribunal, the respondent - Corporation had not filed the trip sheet of the bus route from Uthiramerur to

Kancheepuram, but instead filed the trip sheet from Kancheepuram to Uthiramerur. However, the tribunal had once again dismissed the claim petition on 09.09.2021, although, PW2 who travelled along with the deceased had deposed before the tribunal about the accident. The learned counsel further submitted that the respondent-Corporation had not examined any witness before the tribunal. The learned counsel for the appellants submitted that since the trip sheet produced before the tribunal by the respondent-Corporation does not pertain to the route in which the deceased travelled, the respondent-Corporation should be called upon to produce the trip sheet for the bus route from Uthiramerur to Kancheepuram. Hence, this Court directed the learned counsel for the respondent-Corporation to produce the relevant trip sheet.

8. The learned counsel for the respondent-Corporation per contra produced the relevant trip sheet and submitted that the trip sheet relating



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to the bus route T34 would clearly show that the bus route No.T34 had reached Kancheepuram at 8.25pm and therefore, the version that the accident took place before Kancheepuram at 8.45pm is improbable and false. That apart, the FIR lodged by the relative of the deceased would show that the deceased was lying unconscious on the Uthiramerur road, opposite to Arapakkam village and that on hearing the news, had taken the deceased, who had sustained injuries on the head and all over the body, to the hospital.

9. The learned counsel further submitted that if the deceased had sustained injuries in the manner alleged by the appellants, the deceased would have been taken to the hospital immediately by the passengers of the bus and by the crew members. PW2, who claims to be a person who travelled along with the deceased in the bus had not given any complaint and therefore, his evidence is highly improbable and submitted that the order of the tribunal does not call for interference and prayed for dismissal of the appeal.



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10. Heard the learned counsel for the appellants/claimants and the learned counsel for the respondent-Corporation and perused all the materials available on record.

11. The question in the instant appeal is whether, the tribunal was right in dismissing the claim petition of the appellants?

12. On perusal of the records, it is seen that it is the case of the appellants that the deceased fell down from the government bus, which was plying in Route No.T34 from Uthiramerur to Kancheepuram, at a place opposite to Arapakkam Village.

13. This Court is of the view that even assuming that the bus had reached Kancheepuram at 8.25pm, as could be seen from the trip sheet, merely because the claimants have stated that the accident took place at 8.45pm, their version cannot be thrown out. There may be minor discrepancies with regard to the time of the accident. That would not by itself affect the case of the claimants. However, this Court has to see if the appellants have otherwise established that the deceased died due to the negligence of the bus driver. The appellants had marked Ex.P1- FIR



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and examined PW2, who is said to be the person who had travelled along with the deceased in the said bus. In the FIR it is stated that when the relative of the deceased, who was not examined before the tribunal, first saw him on information, the deceased was lying on the side of the road with severe head and other injuries. PW2 had deposed before the tribunal that he had travelled with the deceased in the same route and due to the sudden brake applied by the bus driver, the deceased was thrown out of the bus. This version appears to be highly artificial and improbable. If the deceased had been really thrown out of the bus as claimed by PW2, the deceased would not have been left unattended on the road, as stated by the informant before the police in the FIR which was registered two days after the accident. The versions are contradictory to each other. It is highly improbable that the bus had proceeded in spite of the fall of the deceased from the bus and no other passenger complained or objected to the same. Therefore, this Court is of the view that PW2's version cannot be believed. Further, the Accident Register, which would contain the earliest version has not been filed before the tribunal.



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15. Therefore, in the above said circumstances, this Court is of the view that in the absence of any other evidence, the tribunal was right in rejecting the claim petition of the appellants. There is no reason to interfere with the same and the appeal is liable to be dismissed. Accordingly, the Civil Miscellaneous Petition is dismissed. No Costs.

29.09.2023

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Index: Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation: Yes/No



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To

1. The Motor Accidents Claims Tribunal,
Additional Subordinate Judge (FAC),
Kanchipuram.
2. The Section Officer,
VR Section,
Madras High Court,
Chennai – 600 104.



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SUNDER MOHAN, J.

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