



C.M.A.(MD)No.2074 of 2013

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 25.07.2023

Pronounced on : 22.08.2023

CORAM:

THE HON'BLE MR.JUSTICE **K.MURALI SHANKAR**

C.M.A.(MD)No.2074 of 2013

N.Ramamoorthy (Died)

2. Subbulakshmi

3. Suganya

4. Kalaivanan

... Appellants

(Appellants 2 to 4 are brought on record as LRs of the deceased sole appellant vide Court order dated 27.04.2022 made in CMP(MD)No.5705 of 2021 in CMA(MD)No.2074 of 2013)

Vs.

1. Baskar

2. The General Manager,
Royal Sundaram Alliance Insurance Co. Ltd.,
Sorrento Building, 1st Floor,
No.6, Lattice Bridge Road,
Adyar, Chennai – 600 020.

... Respondents/
Respondents



C.M.A. (MD) No. 2074 of 2013

Prayer : This Civil Miscellaneous Appeal filed under Section 173(1) of the Motor Vehicles Act, to set aside the judgment and decree in M.C.O.P.No.1018 of 2010 on the file of Motor Accident Claims Tribunal/ Principal Subordinate Judge, Madurai dated 03.10.2013.

For Appellants : Mr.K.Kumaravel
For R1 : No appearance
For R2 : Mr.S.Srinivasa Raghavan

JUDGMENT

The Civil Miscellaneous Appeal is directed against the order passed in M.C.O.P.No.1018 of 2010 dated 03.10.2013 on the file of the Motor Accidents Claims Tribunal/Principal Subordinate Court, Madurai, dismissing the claim petition.

2. Pending appeal, the sole appellant died and his legal representatives got themselves impleaded as appellants 2 to 4.

3. It is not in dispute that the original appellant/claimant was working as a driver in TNSTC at the time of accident and also during the pendency of the claim petition before the Tribunal.



C.M.A. (MD) No. 2074 of 2013

WEB COPY

4. The case of the claimant is that on 08.03.2010 at about 04.00 hrs, the claimant was driving a TNSTC bus bearing Registration No.TN-58-N-0900 from Nagercoil to Madurai and when he was proceeding near Thulukapatti bus stop in Virudhunagar – Sattur main road, a lorry bearing Registration No.TN-12-AZ-6333, which came in the opposite direction in a rash and negligent manner, dashed against the bus and as a result of which, the claimant suffered multiple injuries, that he was immediately taken to Government Hospital, Sattur and that the accident was occurred only due to the rash and negligent driving of the lorry driver.

5. It is further case of the claimant that after treatment in Government Hospital, Sattur, the claimant was transferred to Madurai Government Rajaji Hospital, that subsequently he was admitted in Preethi Hospital, Madurai, that he underwent 5 surgeries and ultimately his left leg was amputated and that the claimant has sustained permanent disability.

6. It is further case of the claimant that the claimant was aged 43 years at the time of accident and as a TNSTC bus driver, he was earning



C.M.A. (MD) No. 2074 of 2013

WEB COPY

monthly salary of Rs.15,619.70/- and daily batta of Rs.80/- for 26 days in a month and that due to the above said accident, he has become unfit for driving and hence, he lost his total earning capacity.

7. The defence of the second respondent/insurer is that the accident was occurred only due to the rash and negligent driving of the claimant/ bus driver and hence, FIR came to be registered against him and after investigation, charge sheet was also laid against him, that the lorry driver drove his lorry in a moderate speed and at that time, the claimant, who was driving the TNSTC bus in a high speed, allowed his bus to the wrong side of the road and dashed against the lorry, that the lorry driver was in no way responsible for the accident and that therefore, the second respondent/ insurer is not liable for the claim.

8. During trial, the claimant has examined himself as P.W.1 and 3 other witnesses Dr.Chidambaram, Thiru.Balu and Thiru.Sikkander as P.W.2 to P.W.4 respectively and exhibited 15 documents as Ex.P.1 to Ex.P.15. The first respondent had remained exparte. The second respondent/insurer has examined 1 witness Thiru.Arunachalam as R.W.1 and exhibited 6 documents as Ex.R.1 to Ex.R.6.



C.M.A.(MD)No.2074 of 2013

WEB COPY

9. The learned trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both the sides, has passed the impugned order dated 03.10.2013 dismissing the claim petition. Aggrieved by the dismissal of the claim petition, the claimant has come forward with the present appeal.

10. The learned counsel appearing for the appellants would submit that the claimant has proved his claim before the Tribunal by admissible evidence with all probabilities, that the Tribunal erred in not considering the evidence of P.W.4-eye witness, who supported the case of the claimant, that the Tribunal has come to a wrong conclusion that wrong side driving cannot be allowed to claim compensation, that the entire negligence was not on the part of the claimant, that the Tribunal ought to have awarded loss of income by applying multiplier method as the claimant's left leg was amputated, that the Tribunal has not awarded any amount for medical bills and that the Tribunal ought to have awarded for transport, pain and suffering, extra nourishment, medical assistance, loss of amenities and other heads also.



C.M.A. (MD) No. 2074 of 2013

WEB COPY

11. The appellants, in the appeal, has taken a new stand that four way track road was being laid at the time of accident and one way road was there and that the claimant, as per the instructions of the police authorities, drove his vehicle on the left side of the eastern side road.

12. It is pertinent to note that the accident and the involvement of the bus bearing Registration No.TN-58-N-0900 and the lorry bearing Registration No.TN-12-AZ-6333 are not in dispute.

13. According to the appellants, the lorry driver was responsible for the accident, whereas, according to the second respondent/insurer, the accident was occurred only due to the rash and negligent driving of the claimant/bus driver. Admittedly, FIR-Ex.P.1 came to be registered against the claimant and after completion of investigation, charge sheet-Ex.R.3 came to be laid against the claimant.

14. It is not in dispute that the accident had occurred on Virudhunagar – Sattur road. It is also not in dispute that the TNSTC bus, which was driven by the claimant, was proceeding from South to North



C.M.A. (MD) No. 2074 of 2013

WEB COPY
i.e., Sattur – Virudhunagar road and whereas, the lorry was proceeding in the opposite direction. It is evident from the observation mahazar under Ex.R.5 and the rough sketch under Ex.R.4 that the accident was occurred on the eastern side of the four way lane road. Considering the above, it is very much clear that the TNSTC bus has moved to the wrong side of the road. But, as already pointed out, the appellants have taken a stand that since the police authorities directed the claimant to take a diversion, he was forced to move to the eastern side of the four way lane road. But it is pertinent to note that the claimant has neither raised any pleadings nor adduced any evidence with regard to the diversion theory now projected by the appellants.

15. The learned counsel appearing for the appellants has relied on the judgment of the Division Bench of this Court in ***Managing Director, Tamil Nadu State Transport Corporation Ltd., Madurai Vs. S.Yobu and another*** reported in ***2014 (1) TN MAC 295 (DB)***, wherein, after investigation, the police referred FIR as 'Mistake of Fact' and the learned Judge of this Court has held that it cannot be substituted for the decision of the Tribunal and that the Tribunal has to decide the question of



C.M.A.(MD)No.2074 of 2013

negligence independently based on the evidence adduced before it. The learned counsel appearing for the appellants has also relied on the decision of this Court in ***Baskar Vs. The Superintendent of Police, Namakkal, Namakkal District and others*** reported in **2014 (1) TN MAC 109**, wherein, another learned Judge of this Court has held that the police referring the case as 'Mistake of Fact', the same cannot be taken as a ground for dismissal of claim petition. There is absolutely no dispute about the legal position referred above.

16. It is settled law that the decision of the police authorities or even the finding of the criminal Court with regard to the mode of accident is not binding on the Tribunal and the Tribunal is duty bound to consider the evidence available on record and to decide as to who is responsible for the accident. In the case on hand, considering the evidence available on record, the finding of the trial Court in rejecting the claim of the bus driver and granting liberty to him to work out his lawful remedy, if any, under the Workmen Compensation Act, cannot be found fault with.

17. No doubt, the claimant has also filed his application under Section 140 of the Motor Vehicles Act, which provides for liability for



C.M.A.(MD)No.2074 of 2013

compensation in certain cases on the principle of no fault. Section 140 contemplates that in the event of death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle or the owners of the vehicles shall jointly and severally liable to pay compensation in respect of death or disablement in accordance with the provisions of the said Section. In case of death, the owners are bound to pay Rs.50,000/- (Rupees Fifty Thousand only) or in case of permanent disablement, the owners are bound to pay to the injured person a sum of Rs.25,000/- (Rupees Twenty Five Thousand only).

18. Liability under Section 140 of the Motor Vehicles Act is fastened on the owner of the vehicle without fault. Since the claim petition filed under Section 166 of the Motor Vehicles Act is misconceived, the claimant is entitled to get compensation under Section 140 of the Motor Vehicles Act. Hence, this Court decides that the claimant is entitled for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) as compensation in terms of Section 140 of the Motor Vehicles Act. Considering the other facts and circumstances of the case, this Court further decides that the parties are to be directed to bear their own costs.



C.M.A. (MD) No. 2074 of 2013

WEB COPY

19. In the result, the Civil Miscellaneous Appeal is partly allowed and the claimant is entitled to get **Rs.25,000/- (Rupees Twenty Five Thousand only)** as compensation. The second respondent/insurer is directed to deposit Rs.25,000/- (Rupees Twenty Five Thousand only) with interest at 7.5% per annum to the credit of M.C.O.P.No.1018 of 2020 on the file of the Motor Accidents Claims Tribunal/Principal Subordinate Court, Madurai, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the appellants are permitted to withdraw the amount with interest. Parties are directed to bear their own costs.

22.08.2023

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
csm



WEB COPY



C.M.A. (MD) No. 2074 of 2013

To:

1. The Motor Accidents Claims Tribunal/
Principal Subordinate Court, Madurai.
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.M.A.(MD)No.2074 of 2013

K.MURALI SHANKAR,J.

csn

Pre-Delivery Order made in
C.M.A.(MD)No.2074 of 2013

Dated : 22.08.2023