



C.M.A.(MD)No.175 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 01.03..2023

Delivered On : 27.04.2023

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.175 of 2020

The General Manager

The Cholamandalam General Insurance Co.Ltd.,

Trichy, Head Office, Dare House, 2nd Floor,

NSC Bose Road, Chennai – 600 001. ... Appellant / 3rd respondent

Vs.

1.David Raj

... 1st Respondent /Petitioner

2.R.Singa Raju

3.C.Sivamurthi

4.Domison

... Respondents 2 to 4 /Respondents 1, 2 &4

5.The Managing Director,

S.E.T.C.Pallavan Salai,

Chennai

... 5th Respondent / 5th Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the fair and decretal order, made in M.C.O.P.No. 36 of 2013, dated 08.03.2019, on the file of the Motor Accidents Claims Tribunal, Special Sub Court, Kuzhithurai.



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For Appellant : Mr.S.Srinivasa Raghavan
For Respondents : Ms.J.Anandhavalli for R4
: No appearance for R1 to R3
: Mr.P.M.Vishnuvarathan for R5

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award, made in M.C.O.P.No.36 of 2013, dated 08.03.2019, on the file of the Motor Accidents Claims Tribunal, Special Sub Court, Kuzhithurai. The appellant herein is the third respondent, the first respondent herein is the claimant and the respondents 2 to 5 herein are the respondents 1, 2, 4 and 5 in the original M.C.O.P. Petition.

2. A brief substance of the petition, in M.C.O.P.No.36 of 2013, is as follows:-

On 30.10.2008, when the petitioner was working as a Conductor in a bus bearing Registration No.TN-01-N-7126, the first respondent drove the lorry bearing Registration No.TN-48-J-0562 in a rash and negligent manner, overtake the bus and parked the lorry, without any signal. Though the bus driver tried to avoid the accident, unfortunately, the bus hit against the back side of the lorry. The petitioner sustained injuries. He was admitted in



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Virudhunagar Government Hospital, then, he was admitted in Madurai Meenakshi Hospital on 30.10.2008 till 15.11.2008 as inpatient. The petitioner was earning Rs.35,010/- per month and the petitioner was earning Rs.2,500/- per month through agriculture. The petitioner claim a sum of Rs.10,00,000/- as compensation.

3. A brief substance of the counter filed by the third respondent, in M.C.O.P.No.36 of 2013, is as follows:-

The nature of injury as stated in the petition is wrong. The accident has not happened due to the negligence of the first respondent. It was the fourth respondent, who drove the bus in a rash and negligent manner and not the respondent. It was the fourth respondent, who drove the bus in a rash and negligent manner and he dashed against the lorry. Charge sheet was laid against the fourth respondent. A passenger in the bus, by name, Sundaram @ Gnanasundaram filed a claim petition in M.C.O.P.No.67 of 2009 and in that case, an award was passed on 20.06.2012, wherein, the fourth respondent was held responsible for the accident. There was no appeal against that order. The third respondent is not liable to pay compensation. The fourth respondent filed a petition in M.C.O.P.No.22 of 2012, the respondents 1 to 3 are necessary parties to the case.



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4. A brief substance of the counter filed by the fourth respondent, in

WEB M.C.O.P.No.36 of 2013, is as follows:

The manner of accident is wrongly stated in the petition. On 30.10.2018, at about 5.30 am., the fourth respondent drove the bus in a slow and cautious manner, It was the lorry bearing Registration No.TN-48-J-0562 was parked on the left side of the road, without any parking light. Though the fourth respondent tried to stop the bus, the bus could not be stopped and it hit the lorry from behind. Since the lorry driver parked the vehicle, without parking light, the first respondent is responsible for the accident. It is wrong to state that the petitioner was getting Rs.35,010/- per month as salary. The petitioner was not doing any agricultural work. The petitioner, after the accident was completely cured and he joined duty. There is no permanent disability. the petition to be dismissed.

5. A brief substance of the counter filed by the fifth respondent, in

M.C.O.P.No.36 of 2013, is as follows:

The accident did not happen due to the rash and negligent driving of the fourth respondent. On 29.10.2008, the bus was taken for a trip from Chennai to Marthandam, the bus driver drove the vehicle keeping the left side of the road in a slow and cautious manner. On 30.10.2008, at about 05.15 am,



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due to some mechanical defect, a lorry was parked along the left side of the road. Since the bus driver drove the vehicle in a cautious manner, the bus stopped by touching the lorry. The petitioner has to prove that he was working as a Conductor at the time of accident. The petitioner has to prove his profession, age, income, medical expenses through proper documents.

6. Two (2) witnesses were examined and 17 documents were marked on the side of the petitioner. One (1) witness was examined and 3 documents were marked on the side of the respondents. After considering both sides, the Tribunal has fixed the 50% responsibility on the first respondent and 50% responsibility on the fourth respondent and has awarded a sum of Rs.2,75,000/- as compensation.

7. Against the award, the appellant- third respondent has filed this Appeal on the following grounds:-

The Tribunal failed to consider that the entire responsibility is on the driver of the bus and that there was no negligence on the part of the driver of the lorry. Fixing 50% liability on the lorry is wrong. The Tribunal has failed to consider that in another claim petition filed by one of victim of the same accident in M.C.O.P.No.67 of 2012, the liability was fixed on the Transport Corporation.



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8. On the side of the claimant, it is stated that the lorry was going ahead of the bus, the lorry suddenly turned to the left, without giving any signal and stopped that leads to the bus hitting on the rear side of the lorry.

9. On the side of the appellant, it is stated that already a claim petition in M.C.O.P.No.67 of 2009 filed by other victim in the same accident was marked as Ex.R2, in which, the Tribunal fixed the liability on the Transport Corporation filed and that logically the same order should be followed in this case. Two different findings on negligence regarding the same accident is unfair. P.W.1 and P.W.2, who were seated in the middle portion of the bus and it may not be possible for them to have seen the occurrence. The time of occurrence is 05.30 am., the month of the accident is October and that there is possibility of darkness at the time of accident.

10. On the side of the fourth respondent, it is stated that it was the driver of the bus was dashed against the stalled lorry. The entire negligence was on the bus driver. The driver of the lorry was not cross examined by the Insurance Company.



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11. On the side of the respondent, it is stated that the evidence of the eye witness, the averments in the F.I.R and charge sheet were against the fourth respondent and that there is no sufficient evidence to prove that the lorry was parked without the parking light at the time of accident.

12. A perusal of Ex.R2 reveals that in the same accident, a person, by name, Sundaram @ Gnanasundaram was injured and he has filed a claim petition in M.C.O.P.No.67 of 2009, before the Sub Court, Kuzhithurai, wherein, the Sub Court, Kuzhithurai has passed an order on 20.06.2012 fixing the entire liability on the Transport Corporation. It is stated that there is no appeal against the order of the Tribunal in M.C.O.P.No.67 of 2009. Considering the earlier order in M.C.O.P.No.67 of 2009, wherein, no appeal was filed and considering that the lorry was stationed at the time of accident and considering the fact that it was the bus that hit against the stationed lorry from behind, it is decided that the entire liability is to fixed on the Transport Corporation. Hence, it is decided that the bus driver is responsible for the accident and the Transport Corporation alone is liable to pay compensation.



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13. There is no dispute regarding the quantum fixed by the Tribunal.

In the above circumstances, it is decided that the quantum fixed by the Tribunal is reasonable.

14. Considering the above, it is decided that the appellant is to be exonerated from the liability. The entire liability is fixed on the Transport Corporation/ fifth respondent in this Appeal.

15. This Appeal is allowed.

(i) The appellant is exonerated from the liability.

(ii) The fifth respondent herein - Transport Corporation, is directed to deposit the entire compensation of Rs.2,75,000/- (Rupees Two Lakhs and Seventy Five Thousand only) (less the amount, if any already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and with costs, within a period of eight weeks from the date of receipt of a copy of this order.



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(iii) On such deposit being made, the first respondent herein / claimant is entitled to withdraw the entire compensation amount together with interest, less any amount already received by him, on filing proper petition before the Tribunal. The claimant is not entitled for interest for the default period, if there is any. No costs.

27.04.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
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To

1.The Motor Accidents Claims Tribunal,
Special Sub Court,
Kuzhithurai.

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



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R. THARANI, J.

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Pre-delivery Judgment made in
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