



C.M.A(MD)No.730 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 24.08.2023

Pronounced On : 12.09.2023

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)No.730 of 2019

and

C.M.P.(MD)No.9347 of 2019

The Managing Director,
Tamil Nadu State Transport Corporation,
Thirumayam Road,
Pudukkottai.

: Appellant / Respondent

Vs.

Anjalai

: Respondent/Claimant

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the order passed in M.C.O.P.No.11 of 2015, dated 29.01.2019 on the file of the Motor Accident Claims Tribunal (Principal Sub Judge), Pudukkottai.

For Appellant : Mr.P.M.Vishnuvardhanan

For Respondent : No Appearance



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JUDGMENT

The Civil Miscellaneous Appeal is directed against the order passed in M.C.O.P.No.11 of 2015, dated 29.01.2019 on the file of the Motor Accident Claims Tribunal (Principal Sub Judge), Pudukkottai.

2. The appellant/Transport Corporation, who was made liable to pay compensation at Rs.2,91,243/- with interest at 7.5% per annum to the respondent/claimant for the disability suffered by her, consequent to an accident occurred on 21.11.2014, challenging the liability mulcted on it.

3. It is pertinent to note that the appellant has not disputed the quantum of compensation awarded at by the Tribunal.

4. The case of the claimant is that on 21.11.2014, when she was standing in Kuppakudi Bus Stop, a bus bearing Registration No.TN-55-N-0354, which was coming from Alangudi towards Pudukkottai, stopped in Kuppakudi bus stop; that when the bus driver after noticing that the claimant had been boarding the bus from the front steps, had taken the bus rashly and negligently and as a result of which, the claimant fell



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down; that the back wheel of the bus ran over on the claimant's left leg; that the claimant has suffered various injuries on her left leg and that the accident was occurred only due to the rash and negligent driving of the bus driver.

5. The defence of the appellant/Transport Corporation is that on 21.11.2014, town bus route No.3 B bearing Registration No.TN-55-N-3054, which came from Alangudi towards Pudukkottai and in Kuppakudi bus stop, when the driver was attempting to stop the bus in the Kuppakudi bus stop by applying the brakes, the claimant in order to get a seat, had hurriedly boarded the bus and in that attempt, she fell down and invited the accident by herself and that the bus driver was noway responsible for the accident.

6. During enquiry, the claimant has examined herself as P.W.1 and exhibited five documents as Ex.P.1 to Ex.P.5. The appellant/Transport Corporation has examined its driver Sivakumar as R.W.1 and adduced no documentary evidence.



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7. The Tribunal, upon considering the evidence both oral and documentary and on hearing the arguments of both the sides, has passed the impugned order dated 29.01.2019, holding that the bus driver was responsible for the accident, directed the appellant/Transport Corporation to pay compensation to the claimant. Aggrieved by the said award, the Transport Corporation has come forward with the present appeal.

8. The points that arise for consideration are :

(i) Whether the Tribunal erred in deciding that the bus driver alone was responsible for the accident, despite showing that the claimant, even before stopping of the bus in order to get a seat in the bus, had hurriedly and negligently attempted to board the bus and as a result of which, fell down and sustained injuries ?

(ii) Whether the appeal is liable to be allowed ?

9. The claimant in her chief examination affidavit would reiterate the contentions raised in the claim petition with regard to the mode of accident. P.W.1 in her cross examination would admit that she has not produced the records relating to the criminal case registered with regard to the accident. She would specifically admit that she had boarded the



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bus as a first person in front steps of the bus and the same is extracted hereunder :

“வெபத்தின் வெழுது வெருந்தின் முன்படிக்கட்டுகளில் முதல் ஆளாக நான்தான் ஏறினேன் என்றால் ஆமாம்.”

10. As already pointed out, the appellant has examined its driver/R.W.1 and R.W.1 in his chief examination affidavit would reiterate the version raised in the counter statement. R.W.1 would say that when he was proceeding from Alangudi towards Pudukkottai and while he was attempting to stop the bus at Kuppakudi bus stop by applying the brakes, the petitioner in order to get a seat, had hurriedly and negligently, had attempted to board the bus and in that attempt, she fell down and sustained injuries and as such, the claimant alone was responsible for the accident.

11. No doubt, F.I.R., was registered against the R.W.1 bus driver. Even assuming for argument sake that the Criminal Court has given a finding that the bus driver was responsible for the accident, the same is not binding on the Tribunal and the Tribunal is duty bound to consider the evidence available on record and to decide independently as to who is responsible for the accident.



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12. As rightly contended by the learned counsel for the appellant, the Tribunal, without considering the evidence of R.W.1/driver of the bus and by relying only on the evidence of P.W.1 and Ex.P.1/F.I.R, has come to a decision that the accident was occurred due to the negligent driving of the bus driver.

13. Considering the way in which, the accident was occurred and also the admission of the claimant that she alone had attempted to board the bus as the first person and the evidence of R.W.1, this Court has no hesitation to hold that the claimant has also contributed to the accident and the same is fixed at 10%.

14. As already pointed out, the appellant has not disputed the quantum of compensation. The Tribunal, taking note of disability suffered at 30%, has granted total compensation of Rs.2,91,243/-. Since this Court has fixed the contributory negligence at 10% on the part of the claimant, the claimant is entitled to get a sum of Rs.2,62,118.70/- rounded off Rs.2,62,120/-.Considering the other facts and circumstances, this Court further decides that the parties are to be directed to bear their own costs and the above point is answered accordingly.



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15. In the result, the Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the tribunal is **reduced from Rs.2,91,243/- to Rs.2,62,120/-**. The Appellant/Transport Corporation is directed to deposit the modified amount with interest at 7.5% per annum, within a period of four weeks from the date of receipt of a copy of this judgment, if not already deposited and on such deposit, the claimant is permitted to withdraw the award amount with accrued interest and costs, less the amount already withdrawn, if any, by filing a necessary application before the Tribunal. The parties are directed to bear their own costs. Consequently, connected Miscellaneous Petition is closed.

12.09.2023

NCC : Yes/No
Index : Yes/ No
Internet : Yes/ No
das

To

- 1.The Motor Accident Claims Tribunal
(Principal Sub Judge), Pudukkottai.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court, Madurai.



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K.MURALI SHANKAR,J.

das

Pre-delivery order made in
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