



C.M.A(MD)No.423 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.04.2023

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.423 of 2017

Praveen

... Appellant/Petitioner

(Sole appellant is declared as major and guardian discharged vide Court order, dated 27.04.2017 made in C.M.P(MD)No. 3881 of 2017)

Vs.

The Managing Director,
Tamil Nadu State Transport Corporation,
Trichy.

... Respondent/Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, to set aside the judgment and decree passed in M.C.O.P.No.634 of 2008, dated 09.03.2016 on the file of the Motor Accident Claims Tribunal/Special Sub Court, Thanjavur.

For Appellant : Mr.N.Tamil Mani

For Respondent : Mr.D.Sivaraman



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C.M.A(MD)No.423 of 2017

JUDGMENT

The present appeal has been filed by the claimant challenging the dismissal of a claim petition on the ground that the claimant was solely responsible for the accident.

2. The claimant was 17 year old. While he attempted to board a bus, according to him, the driver had started the bus without considering the fact that he was boarding the bus and he had fallen down and sustained injuries. According to the claimant, he had sustained fracture in his left leg and other multiple injuries. The claimant sought for a sum of Rs.6,00,000/- towards compensation.

3. The transport corporation had filed a counter contending that the claimant had attempted to alight a running bus and at that point of time, he had slipped down and sustained injuries. Therefore, the accident has taken place solely due to the negligence on the part of the claimant and they are not liable to pay any compensation. They have also questioned the quantum of compensation.



C.M.A(MD)No.423 of 2017

4. The tribunal after considering the oral and documentary evidence, primarily relied upon Exhibit P.1 F.I.R which is said to have been lodged by the minor after the accident. In the said F.I.R, the minor has stated that at about 1.00 p.m., when he had shown his hand to stop the vehicle, the driver of the transport corporation had slowed the vehicle. Believing that the vehicle had been stopped, he had attempted to board the vehicle and at that point of time, the driver had again started the vehicle. But during deposition before the tribunal, the minor claimant has contended that after the vehicle had stopped, he had attempted to alight the vehicle and suddenly, the bus was started and then, he had slipped and fallen down and sustained injuries. The tribunal had relied upon the minor's statement before the police and had dismissed the claim petition in entirety on the ground that the minor was solely responsible for the accident. Challenging the same, the present appeal has been filed.

5. According to the learned counsel appearing for the appellant, a careful perusal of Exhibit P.1 F.I.R will clearly indicate that the vehicle was slowed down in order to enable the claimant to board the bus as per the F.I.R. In the claim petition, the claimant has specifically pointed out that the bus had stopped in front of State Bank of India bus stop and when he tried to alight into the front door, the driver has started the



C.M.A(MD)No.423 of 2017

vehicle in a rash and negligent manner. The claimant being a minor, aged 17 years, doing his Higher Secondary Course and he had gone to the police station to lodge a complaint, the minor variations between the statement before the police authorities and the deposition cannot be taken into consideration. He had further contended that when there is a contradiction between the F.I.R and the evidence before the tribunal, the evidence which is subjected to cross-examination of the other side should be given more weightage.

6. He further contended that the tribunal had erred in solely relying upon the F.I.R and dismissing the claim petition in its entirety after arriving at a finding that the injured claimant had sustained 37% partial permanent disablement. Hence, he prayed for allowing the appeal and to fix the compensation as prayed for in the claim petition.

7. Per contra, the learned counsel appearing for the respondent had contended that the claimant himself had appeared before the police authorities and he has given a statement that he attempted to board running bus and he had fallen down. Therefore, the question of payment of compensation to a person who was sustained injuries because of his negligence is not legally sustainable. Any evidence that is let in before



C.M.A(MD)No.423 of 2017

the tribunal which is contra to the own statement immediately after the accident, cannot be taken into consideration. Hence, he prayed for confirmation to dismissal of the claim petition by the tribunal.

8. I have carefully considered the submissions made on either side.

9. The claim petition has been dismissed solely on the ground that the minor claimant had given a statement before the police at the time of registration of F.I.R that he had shown his hand for stopping the vehicle and the vehicle had slowed down and believing that the vehicle has stopped, he had alighted the vehicle. In the claim petition, it has been stated by the claimant that the bus had stopped in front of State Bank of India bus stop and he tried to enter into the bus. I do not find that there is any variation between the statement given to the police and the averments in the claim petition. The respondent transport corporation had an opportunity to examine their own driver to establish the fact that whether the bus had already reached the bus stop or it was about to reach the bus stop. Though the respondent had pleaded that the minor claimant had attempted to alight a running bus, the driver of the transport corporation has not been examined to prove the same. When the respondent has withheld the best evidence, this Court is not in a position



C.M.A(MD)/No.423 of 2017

to rely upon the mere pleadings on the side of the respondent to come to a conclusion that the accident has happened only due to the negligence on the part of the claimant.

10. The claimant had sustained fracture in his left leg and multiple injuries all over the body. The claimant has produced Exhibit P.6 disability certificate and has examined a doctor as P.W.2. As per the deposition of the doctor P.W.2, the injured claimant had sustained 37% of disability. Considering the fact that the accident has taken place in the year 2007, a sum of Rs.2,000/- could be fixed for each percentage and a total compensation under the head of partial permanent disability could be arrived at Rs.74,000/-. Towards pain and suffering, this Court is inclined to award a sum of Rs.50,000/-. Considering the fact that the claimant was in the hospital for 11 days, a sum of Rs.6,000/- could be paid as attender charges. A sum of Rs.20,000/- could be awarded for extra nourishment and transportation charges. Totally, a sum of Rs.1,50,000/- could be awarded as compensation.

11. The award of the tribunal in M.C.O.P.No.634 of 2008 is hereby set aside and the respondent is directed to pay the compensation of Rs.1,50,000/- (Rupees One Lakh and Fifty Thousand only). The said



C.M.A(MD)No.423 of 2017

amount shall carry an interest at the rate of 7.5% from the date of claim petition. The transport corporation is hereby directed to deposit the award amount within a period of eight (8) weeks from the date of receipt of a copy of this order.

12. The Civil Miscellaneous Appeal stands allowed to the extent as stated above. No costs.

24.04.2023

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

- 1.The Motor Accident Claims Tribunal/
Special Sub Court,
Thanjavur.
- 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.M.A(MD)No.423 of 2017

R.VIJAYAKUMAR,J.

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Judgment made in
C.M.A(MD)No.423 of 2017

24.04.2023