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C.M.A.Nos. 1297 & 1334 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2024

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

Civil Miscellaneous Appeal Nos.1297 & 1334 of 2022

and

Civil Miscellaneous Petition Nos.9420 & 9624 of 2022

The Managing Director (Kumbakonam),
Tamil Nadu State Transport Corporation,
Periyamilaguparai,
Thirichirapalli – 630 001.

... Appellant in both CMAs

Vs.

Krishnamoorthy

... Respondent in CMA No.1297/2022

Rajaperumal

... Respondent in CMA No.1334/2022

Common Prayer: Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 22.09.2021 passed in M.C.O.P.No.439 of 2019 and M.C.O.P.No.361 of 2019 on the file of the Motor Accident Claims Tribunal, Additional District Court, Namakkal.

For Appellant in both CMAs : Mr. M. Murali Vinodh
For Mr. L. Ramanathan

For Respondent in both CMAs : Mr. C. Thangaraju



COMMON JUDGMENT

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Both the appeals arising out of the Common Award dated 22.09.2021 made in M.C.O.P.Nos.439 & 361 of 2019 passed by the Motor Accident Claims Tribunal, additional District Judge, Namakkal. The appeals arising out of same accident taken place on 01.01.2019 at about 6.40 p.m on the Trichy to Namakkal, filed by the State Transport Corporation, challenging the liability to pay the compensation.

2. For the sake of convenience, the parties are referred to hereunder according to their litigative status and ranking before the Tribunal.

3. The Transport Corporation challenged the award on the ground that the claimants have negligently travelled in the two-wheeler under the influence of alcohol and that they are contributors for the accident.

4. In this case, two persons were injured while they were travelling in a two-wheeler namely, the claimant No.1 Rajaperumal (in MCOP No.361/2019) claimant No.2 Krishnamoorthy (pillion rider in MCOP No.239/2019).



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5. Claimant No.1 Rajaperumal (MCOP No.361/2019) was riding a two-wheeler in which, claimant No.2 Krishnamoorthy (MCOP No.239/2019) was travelled along with him as a pillion rider on Trichy to Namakkal Road while they reached near Valavelputhur Division Road, a Transport Corporation Bus driven by its driver came in the opposite direction and hit on the two-wheeler and causing grievous injuries to the claimants. They have come forward with the claim petition under Section 166 of the Motor Vehicles Act, 1988, seeking compensation for a sum of Rs.7 lakhs with interest at the rate of 7.5% per annum.

6. The claim petition was contested by the Transport Corporation on the ground that three persons were travelled in the two-wheeler under the influence of alcohol. The rider of two-wheeler rode the same in high speed and hit on the bus after crossing the centre median of the road. They have also disputed the injuries sustained by the claimants and also quantum of compensation claimed by them in the road accident.

7. The Tribunal, after considering the evidence placed on record, partly accepted the case of the Transport Corporation that both the claimants

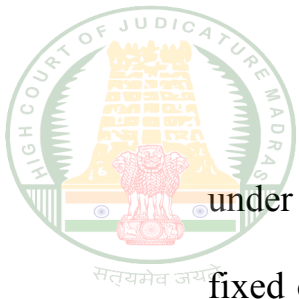


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were travelled along with third person, negligently and without wearing helmet in the two-wheeler. However, it has been held that the accident was taken place due to high speed driving of the driver of the bus. Further, the Tribunal has apportioned the negligence of both sides i.e., 80% on the Transport Corporation and 20% on the claimants. The Tribunal has also quantified the compensation and awarded a sum of Rs.5,53,826/- in favour of the claimant No.1 namely Rajaperumal and a sum of Rs.3,51,905/- in favour of the claimant No.2 Krishnamoorthy along with interest at the rate of 7.5% per annum from the date of filing of claim petition till the date of realization.

8. Aggrieved over the negligence fixed on the part of the driver of the Transport Corporation Bus, this appeal has been filed by the Transport Corporation.

9. The learned counsel for the Transport Corporation submitted that though the Tribunal has accepted the case of the Corporation that the claimants are also contributed to the accident fixed 20% as a contributory negligence which is on the lower side. The Tribunal has also failed to consider the fact that the injured persons were travelled in a two-wheeler



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under the influence of alcohol and thereby, the entire negligence has to be fixed on the claimants alone. Even, it is accepted that the bus driver is also partly responsible for the accident, fixed the contributory negligence of the claimants shall be fixed to the extent of 50%.

10. Per contra, the learned counsel for the claimants submitted that there is no evidence placed on record to show that the claimants were under the influence of alcohol and they contributed to the negligence. 20% of contributory negligence is fixed on the claimants only on the ground that they were not wearing head gear at the time of accident and prays to confirm the award.

11. I have heard the submissions made on both sides and also perused the records available.

12. This appeal is solely restricted, to the question of negligence. On perusal of the award, the Tribunal has taken note of the evidence adduced on the side of the respondent No.1 (Driver of the bus) that three persons were travelled in the two-wheeler under the influence of alcohol and the rider of two-wheeler was not having valid driving licence and also the rider



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of the two-wheeler lost control and hit on the bus. The Tribunal considered this evidence and held that except this oral averment, there is no evidence to support the case of R.W.1.

13. The Medical Records which were came into existence immediately after the accident has not contain any recording that the claimants were under the influence of alcohol and rode the two-wheeler. Similarly, there is no other evidence to substantiate the allegation that the claimants were under the influence of alcohol at the time of accident. The Tribunal has also taken note of the same and held that that the injured persons were not wearing head gear (helmet) at the time of accident, fixed contributory negligence to the extent of 20% totally to the claimants and 80% to the driver of the Transport Corporation Bus. This Court is of the view that the same is reasonable and this Court finds no other reason to interfere with the said findings rendered by the Tribunal. Accordingly, this Court finds there is no merit in both the appeals and the same is liable to be dismissed.

14. In the result, both the Civil Miscellaneous Appeals are dismissed. The Common Award and Decree dated 22.09.2021 passed in



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M.C.O.P.Nos.439 and 361 of 2019 by the Motor Accident Claims Tribunal, Additional District Judge, Namakkal is hereby confirmed. The Transport Corporation is directed to deposit the amount as awarded by the Tribunal along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of respective M.C.O.P.Nos.439 and 361 of 2019 on the file of the Motor Accident Claims Tribunal, Additional District Court, Namakkal. On such deposit, the claimants are permitted to withdraw the award amount as awarded by the Tribunal along with interest and costs, less the amount if any, already withdrawn, as per the apportionment fixed by the Tribunal. The Tribunal shall disburse the award amount by crediting in to the Savings Bank Account of the claimants. The Transport Corporation is permitted to withdraw the amount if any, lying in the credit of respective M.C.O.P.Nos.439 and 361 of 2019 on the file of the Motor Accident Claims Tribunal, Additional District Court, Namakkal. There shall be no order as to costs in the present appeal. Consequently, the connected miscellaneous petitions are closed.

20.12.2024

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Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No



C.M.A.Nos. 1297 & 1334 of 2



To:

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1. The Additional District Judge,
Motor Accident Claims Tribunal,
Namakkal.
2. The Section Officer,
V.R.Section,
High Court, Chennai.



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K. RAJASEKAR., J.

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