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C.M.A.No.852 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :
24.07.2023

Delivered on :
01.02.2024

CORAM

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

C.M.A.No.852 of 2018

1.Selvaraj

2.The Commandant,
105, BN RAF/CRPF,
Vellalore,
Coimbatore – 641 111

... Appellants

Versus

Balasundaram

...Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and the decree dated 18.08.2016 made in M.C.O.P.No.1911 of 2013 by the learned Special Subordinate Judge, Motor Accident Claims Tribunal, Coimbatore.

For Appellants : Mr. Rajesh Vivekananthan

For Respondent : No Appearance (Notice Served)

JUDGMENT

This Civil Miscellaneous Appeal is arising out of the order of M.C.O.P.No.1911 of 2013, dated 18.08.2016 on the file of the learned Special Subordinate Judge, Motor Accident Claims Tribunal, Coimbatore.



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2. The respondents before the Tribunal below are the appellants herein.

3. The brief facts of the case are as follows:-

(i) On 25.09.2013 at about 12:45 p.m., when the respondent/claimant was riding his two wheeler bearing Registration No.TN-38-AU-8934 from South to North near to Goundampalayam signal, the driver of a bus bearing Registration No.TN-37-CB-3551 came in the same direction in a rash and negligent manner without adhering the road traffic rules and dashed against the respondent/claimant, thereby, the respondent/claimant sustained injuries and a fracture on his right leg. He was immediately taken to N.G. Hospital, Coimbatore for treatment. At the time of accident, the respondent/claimant was aged 52 years and he was hale and healthy working as an Area Supervisor at M/s.Tenon Property Services Pvt. Ltd., Chennai and he was earning a sum of Rs.10,000/- per month. Therefore, the injured claimant filed a claim petition before the Tribunal below claiming a sum of Rs.5,00,000/- as compensation.

4. Before the Tribunal below, a counter affidavit has been filed by the second respondent, which was adopted by the first respondent, wherein,



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the appellants have denied the manner of the accident, the age and avocation of the respondent/claimant and stated that the accident had occurred only due to rash and negligent riding of the vehicle by the respondent/claimant alone, while he was trying to overtake in between the second appellant's CRPF bus and a Civil bus, that therefore, he could not control his vehicle and he fell down himself on the front side of the bus, on the left side wheel behind, resulting which, he sustained fracture on his right leg with bleeding injuries. As per the Motor Vehicle Inspector's report, the respondent/claimant is only responsible for the cause of accident and not by the driver of the second appellant's bus. Therefore, the respondent/claimant is not entitled to claim any compensation for the injuries sustained by him.

5. In order to prove the case of the respondent/claimant, during the enquiry, the respondent/claimant examined himself as P.W.1, besides one Doctor, who gave the disability certificate, was examined as P.W.2, and on behalf of the respondent's /claimant's side, nine documents were marked as Ex.P1 to Ex.P9. On behalf of the appellants side, the first appellant was examined as R.W.1 and no document was marked.



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6. Considering the oral and documentary evidence and the submissions made by the learned counsel of both parties, the Tribunal below took a stand that the accident happened only due to rash and negligent driving of the driver of the second appellant's bus, fixed the liability on the part of the appellants and awarded a compensation of Rs.4,04,000/- payable to the respondent/claimant. Challenging the same, the respondents filed the above appeal before this Court.

7. The learned counsel for the appellants would submit that the accident had occurred only due to rash and negligent riding of the vehicle by the respondent/claimant himself by overtaking the vehicle in between two vehicles, and hence, he lost control of his two wheeler and hit on the rear side of the Civil bus and fell down, through which, he sustained a fracture and injuries. According to the appellants, their vehicle was not involved in the said accident and the Tribunal below failed to appreciate the manner of the accident and erroneously fixed the liability on the appellants. Further, the Tribunal below also failed to consider the evidence of R.W.1, who was the eye-witness, being the driver of the second appellant's bus.



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8. According to the appellants, since it is clear from the evidence of R.W.1 that the accident had occurred only due to rash and negligent riding of the vehicle by the respondent/claimant, while overtaking between two vehicles, viz., the first one is the second appellant's bus and another one is a Civil bus. Since the respondent/claimant himself lost his balance, ramped on the rear side of the Civil bus and fell down, by which, he sustained a fracture and injuries, the driver of the second appellant's bus, being a member of the Armed Force, immediately stopped his vehicle, took the injured person, placed him safely beside the road and acted upon under humanitarian attitude. But, the Tribunal below ignored the evidence of R.W.1 and fixed the liability on the appellants and awarded a sum of Rs.4,04,000/- as compensation to the respondent/claimant, which is just and reasonable compensation.

9. It is the further contention of the learned counsel for the appellants that without considering the fact of non-production of Motor Vehicle Inspector's Report pertaining to the two wheeler of the respondent/claimant, which was wilfully not filed, it is clear that the respondent/claimant had driven his bike in a rash and negligent manner and hit the Civil bus and not on the second appellant's bus, that either the



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Tribunal ought to have summoned the Motor Vehicle Inspector's Report of the bike or ought to have examined any person in the Civil bus that instead of doing the same, fastening the liability on the appellants is erroneous, totally unfair and not justifiable, and that as far as the compensation awarded towards the medical expenses is concerned, the Tribunal below erroneously granted a sum of Rs.2,70,000/- for medical expenses, since the medical bills produced by the respondent were fake bills and the Tribunal has also failed to consider the same, that the loss of income granted was also without any proof of income, therefore, the award passed by the Tribunal is liable to be set aside and the appeal is to be allowed.

10. Per contra, the learned counsel for the respondent/claimant would submit that the accident occurred due to rash and negligent act of the first appellant's driving alone and not due to the riding of the vehicle by the respondent/claimant. The respondent examined himself as P.W.1 and produced nine documents. The First Information Report itself would show that a case was registered against the second appellant's bus. Further, the appellants had not examined any independent witnesses and also even the conductor of the bus or any passenger of the bus, or the traffic police. Since the case was registered against the driver of the second appellant's bus,



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namely the first appellant. P.W.1, the injured claimant himself stated that due to the rash and negligent manner of the driving of the driver of the second appellant's bus, namely, the first appellant, the accident happened and the first appellant had not rebutted the same nor established that the accident occurred only due to the rash and negligent riding of the vehicle by the respondent/claimant and not by the driver of the second appellant's bus, namely, the first appellant. As the Tribunal awarded the compensation based on the oral and documentary evidence, there is no merit in the appeal and the same is liable to be dismissed.

11. Heard both sides and perused the material records of this case.

12. Admittedly, the injuries sustained by the respondent/claimant are not in serious dispute. Now, the question is as to whether the accident occurred only due to the rash and negligent driving of the driver of the second appellant alone, namely, the first appellant. The respondent/claimant clearly stated in his claim petition that the accident occurred only due to rash and negligent act of the driver of the second appellant, meaning thereby, on the rear side of the bus, i.e., on the back side of the front wheel on left side, the two wheeler of the respondent/claimant dashed against the



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bus, from which, it is clear that both vehicles of the respondent/claimant and the second appellant's bus, were on the same direction.

13. As rightly stated above, the two wheeler was driven in between the second appellant's bus and the Civil bus, and while overtaking on the rear side of the Civil bus, the two wheeler hit on the front side and got damaged, from which, it is clear that the accident had occurred only due to rash and negligent riding of the rider of the two wheeler. But, however, the respondent/claimant claimed that the case was registered against the first appellant. The respondent/claimant was examined as P.W.1, in which, he clearly narrated about the manner of the accident and the injuries sustained by him. The injured person is also an eye-witness, and the medical report would show that the respondent/claimant sustained injuries and a fracture on his right leg, thereby, disability suffered was at 41% , due to rash and negligent riding of the vehicle by the rider of the two wheeler.

14. But, the appellants have not examined any independent witness nor they have examined the driver or conductor of the Civil bus, which was also allegedly said to have been involved in the said accident. Though the first appellant was examined as R.W.1 on behalf of the appellants, and no



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other independent witness was examined like either the passenger of the civil bus or the conductor/driver of the civil bus with regard to the manner of the accident as the case may be, nor produced the Motor Vehicle Inspector's Report of the two wheeler, which was driven by the respondent/claimant. Therefore, the Tribunal below considered the available materials placed before it and found that the accident occurred due to rash and negligent driving of the driver of the second appellant alone, namely, the first appellant. Since the first appellant is the driver of the second appellant's bus, the Tribunal below directed both the appellants jointly and severally liable to pay the compensation to the respondent/claimant.

15. As far as the quantum of compensation is concerned, P.W.1 is the respondent/claimant and he produced nine documents to substantiate the manner of the accident. He also produced the disability certificate/Ex.P3 and the Doctor gave the disability certificate, was examined as P.W.2. Therefore, after analysing the oral and documentary evidence on record, the Tribunal came to the conclusion that the appellants/respondents are liable to pay the compensation to the respondent/injured claimant. Therefore, this Court does not find any reason to interfere with the findings of the Tribunal below and the appeal filed by the appellants, is liable to be dismissed.



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16. This Court is an Appellate Court as final Court of fact finding Court has to re-appreciate the entire evidence on record. Considering the material evidence, this Court is of the view that there is no merit in the Civil Miscellaneous Appeal.

17. In the result, the Civil Miscellaneous Appeal filed by the appellants is dismissed by confirming the judgment and the decree dated 18.08.2016 made in M.C.O.P.No.1911 of 2013 by the learned Special Subordinate Judge, Motor Accident Claims Tribunal, Coimbatore. However, there shall be no order as to the costs.

01.02.2024

Index : Yes/No
Speaking Order : Yes/No
Neutral Case Citation : Yes/No

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To

1.The Special Subordinate Judge,
Motor Accident Claims Tribunal, Coimbatore.

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



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P.VELMURUGAN, J.

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Pre-Delivery Judgment in

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