



C.M.A.(MD)No.1307 of 2011

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Dated: 08.01.2024

CORAM:

THE HON'BLE MR.JUSTICE **P. DHANABAL**

C.M.A.(MD)No.1307 of 2011

The Managing Director
Tamil Nadu State Transport Corporation Ltd.,
Bye pass road,
Madurai-16

... Respondent/ Appellant

Vs.

K.Thirupathy

.. Petitioner/Respondent

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree passed in MCOP No. 59 of 2005 dated 06.08.2009 on the file of the Motor Accident Claims Tribunal/IV Additional Sub Court, Madurai.

For Appellant : Mr.M.Prakash

For Respondent : No appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed as against the order passed in MCOP No. 59 of 2005 dated 06.08.2009 on the file of the Motor Accident Claims Tribunal/IV Additional Sub Court,



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Madurai wherein the respondent herein has filed the claim petition as against the appellant herein.

2. The Tribunal has awarded a sum of Rs.15,160/- with interest @ 7.5 per annum and directed the respondent to pay the above said amount. As against the award passed by the Tribunal, the present Civil Miscellaneous Appeal has been filed by the respondent/transport corporation.

3. For the sake of convenience and brevity, the parties hereinafter will be referred to as per their status/ranking in the Tribunal.

4. The brief facts of the petition are as follows:

On 12.09.2004, at about 07.35 pm., when the petitioner was travelling as a passenger in the car bearing Reg.No.TN-32-3375, at that time, the respondent driver drove the bus bearing Reg.No.TN-32-N-0797 in a rash and negligent manner and dashed against the car, as a result of which, the petitioner sustained grievous injuries. The accident took place due to negligence of the driver of the respondent. The First Information Report has been registered in Crime No.718 of 2004 as against the driver of the



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respondent. The petitioner sustained grievous injuries and thereby, suffered permanent disability. Hence, the claim petition has been filed seeking compensation of Rs.1.5 lakhs.

5. The brief averments of the counter filed by the respondent are as follows:

The averments made in the petition are all false. The manner of accident, age, income of the petitioner, nature of injuries sustained by him are all denied. The case was registered as against the driver of the respondent and thereafter, the same was closed as Mistake of Fact and therefore, this petition is liable to be dismissed as against this respondent. The accident took place due to the rash and negligence of the driver of the car and the respondent is no way responsible for the accident and therefore, the petition is liable to be dismissed.

6. Before the Tribunal, the second respondent/owner of the car remained exparte. In order to prove the case of the petitioners, P.W.1 to P.W. 3 were examined and marked documents Exs.P.1 to P.7 and also marked exhibits Ex.X.1 to X.4. On the side of the respondent, R.W.1 to R.W. 3 were examined and Exs.R.1 to R7 were marked.



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7. After hearing both sides and perusing the documents available on record, the Tribunal has awarded a sum of Rs.15,160/- along with interest @7%per annum. Aggrieved by the above said order, the respondent/Transport Corporation has filed the present appeal on various grounds.

8. The learned counsel appearing for the appellant would contend that the the accident took place due to negligence on the part of the car driver and the First Information Report has been mistakenly registered as against the driver of the appellant and thereafter, the said charge sheet was referred as Mistake of Fact and thereby, the investigation was closed as against the driver of car. In order to prove the case of the petitioner, they have examined the driver of the bus as witness, but the Tribunal without considering the same, awarded a sum of Rs. 15,160/- by fixing liability as against the driver of the bus. Therefore, the award passed by the Tribunal is liable to be set aside.

9. The learned counsel appearing for the first respondent/claimant also would contend that the accident took place only due to the rash and negligence of the driver of the bus driver and on the side of the petitioner, they have examined P.W.1 to P.W.3



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and marked documents Ex.P.1 to P.7 and on the side of the respondent, they have examined R.W.1 to R.W.3 and marked documents Ex.R.1 to R.7. The Tribunal after analyzing all the evidences and documents adduced on either side, correctly fixed the liability as against the driver of the bus and thereby, the present appeal is liable to be dismissed.

10. This Court after hearing both sides and upon perusing the documents including the order of the Tribunal frames the following point for determination in this appeal:

i) Whether the appeal is liable to be allowed or not?

11. In this case, there is no contravention with regard to the accident and both the parties admitted the accident. According to the appellant, the accident was not took place due to the negligence on the part of the driver of the bus and the same was occurred due to the negligence on the part of the car driver. In order to prove the same, on the side of the appellant/respondent, they have examined R.W.1 and he deposed that the accident did not take place due to the negligence on the part of the driver of the bus and the First Information Report was registered as against the driver of the bus and the same was closed as Mistake of Fact since the accident took



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place due to the negligence on the part of the driver of the car. Per contra on the side of the petitioner, they have examined P.W.1 to P.W. 3 and marked documents Ex.P.1 to P.7. On perusal of the evidence of the petitioner side, they revealed that the accident took place due to negligence on the part of the driver of the bus and the First Information Report was also registered as against the driver of the Bus. The Tribunal also after analyzing the evidence adduced on both side fixed liability as against the driver of the bus.

12. In this case, as per evidence of P.W.1, the accident took place due to the rash and negligence on the part of both the drivers. However, initially, the First Information Report was registered as against the bus driver alone. The driver of the car also died in the same accident. Therefore, the police has closed the case as Mistake of Fact but the respondent failed to produce the entire documents to prove the negligence like observation mahazhar, rough sketch and Motor Vehicle Inspector's Report. It is well settled law that only because the criminal case was closed as Mistake of Fact, the Court cannot discharge the liability of the bus driver and the manner in which the accident took place shows the negligence on the part of the bus driver. Due to the accident, the car was thrown out and the driver of the car died.



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13. Further, as per Ex.P.1 which was given by one of the occupant in the car clearly shows that the accident took place due to the rash and negligence of the driver of the bus alone. The said information is the first information in respect of the accident. Thereafter, in the petition, the petitioner has stated that both the vehicles were responsible for the accident. Therefore, considering the said evidence, this Court is of the opinion that the accident took place only due to the rash and negligence on the part of the driver of the bus.

14. Therefore, considering the above aspects, this Court is of the opinion that the accident took place due to negligence on the part of the driver of the bus. Taking into consideration all the evidence adduced the Tribunal has correctly come to the conclusion that the accident took place due to the negligence on the part of the driver of the bus. Therefore, there is no infirmity or perversity found in the order of the Trial Court and the appeal deserves to be dismissed.

15. In the result this Civil Miscellaneous Appeal stands dismissed confirming the order passed by the Tribunal in



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M.C.O.P.No.59 of 2005 dated 06.08.2009 on the file of the Motor
Accident Claims Tribunal/IV Additional Sub Court, Madurai. No
costs.

08.01.2024

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
aav

To:

1. The Motor Accident Claims Tribunal
IV Additional Sub Court, Madurai
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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P. DHANABAL,J.

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