



C.M.A.(MD)No.399 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 14.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.DHANABAL

C.M.A.(MD)No.399 of 2012

and

M.P(MD) No.3 of 2012

The Divisional Manager,
New India Assurance Company Limited,
2- Main Road,
Dindigul.

... Appellant/3rd Respondent

-vs-

1. Sebastian @ Sebastian Arulraj

... 1st Respondent/Petitioner

2. The Managing Director,
Tamil Nadu State Transport Corporation,
Madurai Division – IV,
Dindigul.

... 2nd Respondent/1st Respondent

3. Senthilkumar

... 3rd Respondent/ 2nd Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the award dated 08.11.2010 and made in M.C.O.P.No.100 of 2003 on the file of the Motor Accident Claims Tribunal, Principal Sub Court, Dindigul, and praying to set aside the same.



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For Appellant : Mr.N.Dilip Kumar
For R1 : Ex-parte
For R2 : Mr.M.Prakash
For R3 : No appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant as against the order passed in M.C.O.P.No.100 of 2003 on the file of the Motor Accident Claims Tribunal, Principal Sub Court, Dindigul, wherein, the first respondent herein has filed the claim petition before the Tribunal for claiming a sum of Rs.4,00,000/- (Rupees Four Lakhs only) towards compensation.

2. The Tribunal has awarded sum of Rs.1,71,500/- (Rupees One Lakh Seventy One Thousand and Five Hundred only) along with interest at the rate of 7.5% p.a. by directing the respondents 1 and 3 in the claim petition to pay each 50% of amount. As against the order passed by the Tribunal, the present appeal has been filed by the Insurance Company/3rd respondent.

3. The brief facts of the averments made in the petition before the Tribunal are as follows:

On 27.06.2002, at about 09.00 hours, when the petitioner was



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proceeding in the Auto bearing Registration No.TN-57-C-5707, at that time, the Bus bearing Registration No.TN-57-N-0609 came in a rash and negligent manner and dashed against the Auto. Thereby, the petitioner sustained fracture injuries and suffered permanent disability. Therefore, he claimed a sum of Rs.4,00,000/- (Rupees Four Lakhs only) towards compensation.

4. The gist of the counter filed by the first respondent is as follows:

The driver of the first respondent drove the vehicle in a slow speed, but the driver of the Auto drove the Auto in a rash and negligent manner and dashed against the Bus and thereby, the accident had happened due to the negligence on the part of the Auto Driver. Therefore, the first respondent Corporation is in no way liable to pay compensation.

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

The driver of the Auto has no valid licence and the FIR has been registered as against the driver of the bus. There is no negligence on the part of the driver of the first respondent. Hence, this petition is liable to be dismissed.



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6. Before the Tribunal, on the side of the petitioner, they have examined P.W.1 and P.W.2 and marked documents Ex.P.1 to P.10. On the side of the respondents, R.W1 was examined and Exhibits R.1 to R3 were marked.

7. After considering the evidence adduced by both sides, the Tribunal fixed the liability as against the Bus driver as well as the Auto Driver each 50% and awarded a sum of Rs.1,71,500/- (Rupees One Lakh Seventy One Thousand and Five Hundred only) along with interest at the rate of 7.5% p.a. by directing the respondents 1 and 3 in the claim petition to pay each 50% of amount.

8. Aggrieved by the order of the Tribunal, the present appeal has been filed by the Insurance Company/3rd respondent on various grounds including the liability.

9. The learned counsel appearing for the appellant would contend that the accident had happened due to the negligence on the part of the Bus driver and the FIR was registered as against him and already in another case, the Tribunal has fixed the liability as against the bus driver and dismissed as



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against the Insurance Company. But the Tribunal, without considering the same, fastened the liability as against the Insurance Company as 50% of the liability. Therefore, the order passed by the Tribunal is liable to be set aside.

10. The learned counsel appearing for the second respondent/1st respondent would contend that the accident had happened due to the negligence on the part of the Auto driver who is the petitioner in the main petition and the first respondent herein. Though the F.I.R has been registered as against the driver of the bus, the accident had happened due to the negligence on the part of the auto driver. In order to prove the negligence on the side of the second respondent/1st respondent, the driver of the Bus was examined as R.W.1 and marked Exs.R.W.1 to R.W.3. R.W.1 categorically deposed about the negligence on the part of the Auto Driver and thereby, the second respondent/1st respondent proved the negligence on the part of the driver of the Auto. However, the Tribunal after considering the evidences adduced on either side, fixed the liability as against the bus driver 50% as against the Auto driver 50% by directing the Insurance Company to pay 50% award amount. Therefore, the order passed by the Tribunal is in order and the present appeal is liable to be dismissed.



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11. This Court heard both sides and perused the materials on record, upon hearing both sides and perusing the records the point for determination in this appeal:

“Whether this appeal is liable to be allowed or not?”

12. In this case, it is an admitted fact that both the vehicles involved in the accident and F.I.R has been registered as against the driver of the Bus and the petitioner, is the driver of the Auto which involved in the accident. He has filed original claim petition before the Tribunal and the Tribunal fastened liability of 50% Auto driver and 50% against the Bus driver. As against the liability, the present appeal has been filed by the Insurance Company of the Auto.

13. According to the appellant, the accident took place due to the negligence on the part of the Bus driver. The petitioner also in his evidence stated about negligence and proved that the accident took place only due to the negligence on the part of the bus driver and FIR was also registered as against the Bus driver.



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14. Per contra, on the side of the second respondent/first respondent Corporation, they examined the driver of the Bus to prove the nature of the accident and he deposed that the accident did not take place due to the negligence of bus driver and that the accident happened due to the negligence on the part of the Auto Driver who is the first respondent/ petitioner.

15. The Tribunal has fixed the liability as against 50% Auto driver and 50% as against the Bus driver. Though the appellant/third respondent has not examined any witnesses, the first respondent/petitioner himself filed a petition compensation as against the first respondent and FIR was also registered as against the driver of the Bus. According to the petitioner's side evidence, the Bus driver was only responsible for the accident. The second respondent/first respondent failed to examine any passengers travelled in the bus to prove the negligence the accident took place due to the negligence on the part of the driver of the Auto. The Tribunal, without considering the same, fixed liability 50% as against Auto and 50% as against the Bus. Therefore, the finding of the Tribunal in respect of negligence is liable to be set aside. Further, a careful perusal of Ex.R3, reveals that already in the claim petition filed by the one of the claimants who sustained the injuries in same accident,



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the Tribunal had fixed the liability only as against the driver of the Bus and the petition was dismissed as against the owner and insurer of the Auto, against which no appeal was preferred and the Tamil Nadu State Transport Corporation also admitted liability. Therefore, the available evidence shows that the accident took place due to the negligence of bus driver. In view of the above discussions the finding of the Tribunal by fixing negligence as against both the vehicle drivers is set aside and the accident took place due to the negligence of driver of the bus and the TNSTC Bus Corporation is liable to pay compensation to the first respondent/petitioner.

16. In this case, there is no dispute in respect of the quantum of the amount. The first respondent/petitioner had not disputed the quantum of the amount fixed by the Tribunal. The Tribunal has awarded a fair and just compensation, after considering the nature of injuries sustained by the petitioner.

17. Therefore, in view of the above said discussions, the second respondent/1st respondent is liable to pay compensation to the petitioner.



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18. In the result, this Civil Miscellaneous Appeal is partly allowed and the petitioner is entitled to compensation as awarded by the Tribunal and the second respondent Bus/ TNSTC is directed to pay the entire award amount to the petitioner with interest as ordered by the Tribunal. The second respondent is directed to deposit the entire amount within a period of two months from the date of this judgment. The petition is dismissed against the third respondent. There shall be no orders as to costs. Consequently, connected Miscellaneous Petition is closed.

14.02.2024

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

1. The Motor Accident Claims Tribunal,
Principal Sub Court,
Dindigul.

2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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P.DHANABAL,J.

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