



C.M.A.(MD)No.731 of 2011

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated: 08.01.2024

CORAM:

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

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M/s.New India Assurance Co. Ltd,
Rep.through its Divisional Manager,
242-B, Kamarajar Salai,
Madurai

... Appellant/ Respondent No.3

Vs.

1. B.Boomirajan

.. Respondent No.1/Petitioner

2.M/s.Tamil Nadu State Transport Corporation Ltd.,
Rep. through its Divisional Manager,
Bye pass road
Madurai- 10.

.. Respondent No.2/ Respondent No.1

3.A.Solaiappa Nadar

.. Respondent No.3/ Respondent No.2

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award dated 15.12.2010 and made in M.C.O.P.No.2839 of 2004 on the file of the Motor Accidents Claims Tribunal/Additional District and Sessions Judge, Fast Track Court No.III, Madurai.

For Appellant : Mr.B.Vijay Karthikeyan

For R1 : Mr.C.M. Mari Chelliah Prabhu

For R2 : Mr.M.Prakash

For R3 : No appearance



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JUDGMENT

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This Civil Miscellaneous Appeal has been filed as against the order passed in M.C.O.P.No.2839 of 2004 on the file of the Motor Accidents Claims Tribunal/Additional District and Sessions Judge, Fast Track Court No.III, Madurai, Wherein the first respondent herein has filed claim petition as against the second and third respondents herein and the appellant/third respondent.

2. The Tribunal has awarded a sum of Rs.95,000/- with interest @ 9% per annum by fixing liability of 50% as against the second respondent/first respondent herein and 50% as against the appellant/third respondent. As against the award passed by the Tribunal the appellant/third respondent has filed this present Civil Miscellaneous Appeal.

3. For the sake of convenience and brevity, the parties herein after 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 7.35 pm., when the petitioner was travelling as a passenger in the car bearing Reg.No. TN 32 3375 belonging to the second respondent and insured with the third respondent from Mangulam to Uthankudi, at that time, the first respondent driver drove the bus bearing



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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 first and second respondent drivers. The First Information Report has been registered in Crime No.718 of 2004 as against the driver of the first respondent. The petitioner sustained grievous injuries and thereby suffered permanent disability. Hence the present petition has been filed seeking compensation of Rs.2.5 lakhs.

5. The brief averments of the counter filed by the first 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 first respondent and thereafter, the same was closed as Mistake of Fact, 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 second respondent and the first respondent is no way responsible for the accident, therefore, the petition is liable to be dismissed.

6. The brief counter filed by the third respondent are as follows: that the averments in the petition are denied as false. The manner of accident, age, income, nature of injuries sustained by the petitioner are all denied. The



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accident took place only due to the rash and negligent driving of the driver of the first respondent. The First Information Report also registered as against the driver of the first respondent, thereby the third respondent is not liable to pay compensation to the petitioner. The driver of the second respondent has no valid licence at the time of accident and thereby the petition is liable to be dismissed.

7. Before the Tribunal, the second respondent/owner of the car remained exparte. Inorder to prove the case of the petitioners P.W.1 to P.W. 3 were examined and marked documents Exps.P.1 to P.7 and also marked exhibits Ex.X.1 to X4. On the side of the respondent R.W.1 to R.W. 3 were examined and Exs.R.1 to R7 were marked.

8. After hearing both sides and perusing the documents available on record, the Tribunal has awarded a sum of Rs.95,000/-along with interest @9%per annum by fixing 50% liability as against the first respondent and 50% liability as against the second and third respondents. Aggrieved by the above said order the third respondent/ Insurance company has filed this appeal on various grounds.



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9. The learned counsel appearing for the appellant would contend that the accident took place only due to the rash and negligent driving of the bus driver i.e., first respondent and the Tribunal has fixed liability for composite negligence on the part of the driver of the second respondent/driver of car. In the connected case which arising out of the same accident, the Tribunal has fixed liability only as against the driver of the bus.. The said order is also marked as documents. Inspite of that the Tribunal has fixed compensation by holding that there is a composite negligence on the part of the Ambassador car. Further the driver of the car has no valid license on the date of accident and he also died in the accident. Therefore the Tribunal ought not to have fixed liability on the driver of the ambassador car. Therefore, the award passed by the Tribunal in respect of 50% liability is liable to be set aside.

10. 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 also admitted that in other case the Tribunal has fixed liability only as against the driver of the bus.

11. The learned counsel appearing for the second respondent/first respondent, TNSTC bus would contend that, initially the case was registered as against the driver of the bus and therefore the investigating agency has



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investigated the case and closed the case as 'Mistake of Fact' and the accident took place only due to the rash and negligence on the part of the driver of the car as he dashed against the bus and then he died. Therefore, the Tribunal has fastened the negligence @ 50% as against the driver of the bus and @ 50% negligence as against the driver of the car. Therefore, the appeal is liable to be dismissed.

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

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

13. In this case, there is no contravention with regard to the accident and both the parties admitted the accident. The contention of the appellant is that the accident took place due to the negligence on the part of the driver of the bus. According to the second respondent/first respondent the accident took place only due to the rash and negligence on the part of the driver of the car. In order to prove the rash and negligence, the claimant/first respondent was examined P.W.1 before the Tribunal and he deposed that, the accident took place only due to the negligence on the part of the both the drivers of car and bus.



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14. On the side of the second respondent/first respondent the driver of the bus was examined as R.W.1 and he deposed about the negligence on the part of the driver of the car. Already the driver of the car died in the accident and thereby the Tribunal in other cases which are arising out of the same accident based on the evidence held that the incident took place only due to the rash and negligence of the driver of bus. In this case, the Tribunal has fastened the liability as against the bus driver as well as driver of the car. It is well settled law that the order passed by one Tribunal is not binding in nature, as far as other cases pending on other Tribunal are concerned. Every case has to be assessed with available evidence adduced in that particular case.

15. 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 case 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 in respect of 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



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negligence on the part of the bus driver. Due to the accident the car was thrown out and the driver of the car died.

16. 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.

17. In this case, there is no contravention with regard to the quantum of award. The Tribunal has awarded a sum of Rs.95,000/- towards compensation to the first respondent/claimant . This appeal has been filed as against the composite negligence fixed on the driver of the car. Therefore, the Tribunal has not taken into to the account the contents of the First Information Report registered as against the bus driver based on the complaint given by one of the passenger travelled in the car. Therefore, the order of the Tribunal is liable to be set aside in respect of composite negligence fixed as against the driver of the car.



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18. In the result this Civil Miscellaneous Appeal is partly allowed and the order passed by the Tribunal in M.C.O.P.No.2839 of 2004 on the file of the Motor Accidents Claims Tribunal/Additional District and Sessions Judge, Fast Track Court No.III, Madurai is modified to the effect that the first petitioner/claimant is entitled for a sum of Rs.95,000/- as compensation with interest @9% per annum and the first respondent is liable to pay the entire award amount along with accrued interest and costs within a period of two months from the date of receipt of this order. The petition is dismissed as against R2 and R3. After deposit the petitioner is entitled to withdraw the said amount by filing appropriate application.

08.01.2024

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

1. The Motor Accident Claims Tribunal,
Additional District and Sessions Judge, Fast Track Court No.III, 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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