



C.M.A.(MD)No.1190 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 13.09.2024

CORAM :

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A(MD)No.1190 of 2024
and M.P(MD)No.12503 of 2024

The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
19, Trivandrum Road,
Vannarpettai Post,
Tirunelveli – 627 003.

... Appellant/2nd Respondent

Vs.

1.Palanisamy

..Respondent No.1/Petitioner

2.Mariappan

...2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 09.06.2023 passed in M.C.O.P.No.1985 of 2018 on the file of the Motor Accident Claims Tribunal cum Special Sub Court, Madurai.

For Appellant	: Mr.S.Micheal Heldon Kumar
For R1	: Mr.K.Navaneetharaja
R2	: Given up

JUDGMENT

The instant appeal challenges the finding on negligence by the Tribunal.



2.The 1st respondent/claimant filed a claim petition stating that while the claimant was travelling as a pillion rider in a two-wheeler, the bus belonging to the appellant came in a rash and negligent manner and dashed against the two-wheeler, as a result of which, the pillion rider as well as the rider sustained grievous injuries.

3. The appellant filed a counter stating that the accident took place only due to the negligence of the rider of the two-wheeler as he had dashed against the diesel tank of the bus, which itself would show that there is no negligence on the side of the bus driver and in any case, the compensation claimed was excessive.

4. Before the Tribunal, the respondents examined P.W.1 to P.W.3 and marked Ex.P.1 to P.9. The disability certificate was marked as Ex.C.1. The appellant examined R.W.1 and marked Ex.R.1.

5. The Tribunal, after taking into consideration the oral and documentary evidence, held that the accident predominantly took place due to the rash and negligent riding of the two-wheeler and apportioned the contributory negligence on the rider at 70% and on the driver of the



bus belonging to the appellant at 30%.

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6. The learned counsel for the appellant submitted that the finding on negligence is erroneous inasmuch as the Tribunal having held that the accident took place predominantly due to the negligence of the rider and in order to award compensation, had erroneously fixed the contributory negligence on the bus driver.

7. The learned counsel for the 1st respondent/claimant, per contra, submitted that the appellant had marked the award passed in M.C.O.P.No.425 of 2015 on the file of the IV Additional Sub Court, Madurai, which was filed by the rider of the two-wheeler, in which the Tribunal had fixed the contributory negligence on the bus driver at 30%; that the said award has not been challenged; that has become final; and that therefore, on parity, the instant appeal also has to be dismissed.

8. This Court gave its anxious consideration to the submissions made by the learned counsel for the appellant and the learned counsel for the respondent No.1 and carefully perused the materials available on record.



9. The only point for consideration in the instant appeal is as follows:

Whether the finding on negligence by the Tribunal is justified.

10. The claimant had examined himself and a doctor to prove the manner of the accident and the nature of injuries sustained by him. The nature of injuries sustained by the claimant and the quantum of compensation are not under challenge. In order to prove the accident, besides examining himself, the claimant had also marked the first information report, the contents of which, corroborate his version. The Tribunal had also taken into account the award passed in M.C.O.P.No. 425 of 2015, which was filed by the rider of the two-wheeler, wherein the Tribunal had fixed the contributory negligence at 30% on the bus driver considering the nature of the accident and the fact that the rider of the two-wheeler had dashed against the diesel tank and therefore, he was predominantly responsible for the accident. Though the driver of the bus has been examined, this Court finds that the Tribunal had after considering the other evidence on record and the earlier award passed in M.C.O.P.No. 425 of 2015 had correctly fixed the contributory negligence at 30% on the bus driver. There is no infirmity in the said finding.



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Therefore, the award of the Tribunal deserves to be confirmed and hence confirmed. The point for consideration is answered accordingly.

11. The learned counsel for the appellant shall deposit the entire compensation amount with accrued interest at the rate of 7.5% from the date of petition till the date of deposit, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. The respondent No.1/claimant is permitted to withdraw the same by filing a suitable application before the Tribunal.

12. In the result, the appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

13.09.2024

Index : Yes / No
Neutral Citation : Yes / No
CM

To

1. Motor Accident Claims Tribunal cum Special Sub Court, Madurai.

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



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C.M.A.(MD)No.1190 of 2024

SUNDER MOHAN, J.

CM

Judgment made in
C.M.A(MD)No.1190 of 2024
and M.P(MD)No.12503 of 2024

13.09.2024