

The Managing Director Vs. Ramamoorthy

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Court : Chennai

Decided On : Jun-24-2014

Judge : K.Ravichandrabaabu

Appellant : The Managing Director

Respondent : Ramamoorthy

Judgement :

IN THE HIGH COURT OF JUDICATURE OF MADRAS DATED:

24. 06.2014 CORAM: THE HONBLE MR. JUSTICE S. MANIKUMAR C.M.A.No.1775 of 2014 and M.P.No.1 of 2014 The Managing Director, Metropolitan Transport Corporation Limited, Anna Salai, Chennai - 2 ... Appellant Vs. Ramamoorthy Respondent The Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act against the award & Decree dated 20.09.2013 made in M.C.O.P.No.4679 of 2011 on the file of the Motor Accidents Claims Tribunal (V Judge, Small Causes Court), Chennai. For Appellant : Mr. A.Babu

JUDGMENT

It is the case of the respondent that on 20.07.2011, about 19.50 hours, when he was alighting from a transport Corporation bus bearing Regn.No.TN01 N5008 without noticing him, the driver of the bus started the bus. He lost control fell down and sustained multiple injuries. For pecuniary and non-pecuniary loss, he filed

M.C.O.P.No.4679 of 2011 on the file of the Motor Accidents Claims Tribunal (V Judge, Small Causes Court), Chennai, claiming compensation of Rs.3,00,000/-.

2. The Metropolitan Transport Corporation defended the claim contending inter alia that the bus bearing Regn.No.TN01-N-5008, Route No.22D, was on its trip from Anna Square to Villivakkam, about 19.50 hours and when the bus was nearing Adhithanar Road, the conductor blew the whistle to stop the bus at the Eye Hospital bus stop and when all the passengers alighted, he started the bus. At that time, a male passenger aged about 60 years attempted to alight from the moving bus, lost his control, fell down and sustained injuries. Thus, they disputed negligence attributed against the driver of the Metropolitan Transport Corporation bus. On the above pleadings the claims tribunal, framed the following points for consideration. 1. Whether the petitioner sustained injuries due to the rash and negligent driving of the driver of the respondent's vehicle?. 2. Whether the respondent is liable to pay the compensation?. 3. Whether the petitioner is entitled for the compensation, if so, what is the just compensation?. 3. Before the claims tribunal, the injured aged about 60 years, examined himself as PW1 and reiterated the manner of accident. PW2, is the Doctor, who assessed the extent of disablement. Ex.P1, FIR, Ex.P2, Discharge Summary, Ex.P3, OP Book, Ex.P4, Disability Certificate and Ex.P5, x-ray film have been marked on the side of the respondent/claimant. RW1, is the driver of the Metropolitan Transport Corporation bus.

4. Upon evaluation of pleadings and evidence, the claims tribunal found that RW1, was negligent in causing the accident. On the basis of the oral and documentary evidence, the claims tribunal awarded compensation of Rs.2,64,500/-, with interest, at the rate of 7.5% per annum from the date of claim till the date of deposit as apportioned hereunder. Loss of income for 3 months : Rs.13,500/- Transportation : Rs. 5,000/- Extra Nourishment : Rs. 5,000/- Damage to clothes : Rs. 1,000/- Medical expenses : Rs. 5,000/- Attender charges : Rs. 5,000/- Pain and suffering : Rs.75,000/- Loss of amenities : Rs.75,000/- Disability of 40% at the rate of Rs.2,000/- per percentage : Rs.80,000/- 5. When the present appeal was taken up for hearing, Mr.A.Babu, learned counsel for the appellant transport corporation submitted that the challenge, in this appeal is only to the finding fixing

negligence on the driver of the Metropolitan Transport Corporation bus. In the light of the restricted submission, there is no need to advert to the aspect of the quantum of compensation.

6. Even as per the case of the Metropolitan Transport Corporation, the respondent was aged 60 years. According to the injured, when he was alighting, the driver started the bus, without noticing him and as a result, he lost his balance, fell down and sustained injuries. FIR has been registered against the driver of the Metropolitan Transport Corporation bus. Oral testimony of the injured is duly corroborated. Though, RW1, driver of the bus has denied negligence, there is no supporting evidence. On the aspect of duties and responsibilities of the crew, this Court deems it fit to consider the following decisions. (i) In Venkataswami Motor Service v. C.K.Chinnaswamy and others [1998 ACJ371, this Court has held that, it is the fundamental duty of the crew viz., driver and conductor to see whether any passenger is getting into the bus or getting down from the bus before moving the bus. (ii) In Beni Bai and others v. A.Salim and another [1998 ACJ1348, a Hon'ble Division Bench of the Madhya Pradesh High court held that, it is the duty of the driver and conductor to see whether the passengers have got down from the bus or not and then only the driver should start the bus. (iii) In M.Jagannathan v. Pallavan Transport Corporation Ltd., [1999 ACJ366, a Hon'ble Division Bench of this Court has held that it is the duty of the driver and conductor to caution the passengers when they attempt to get down, irrespective of the fact whether that place is a bus stop or not. The said decision is followed in Tamil Nadu State Transport Corporation (Madurai Division III) Ltd. v. Saraswathi and four others [2000 (1) LW318. (iv) Even if the deceased had attempted to alight a moving bus, it is the duty of the Conductor and the driver to see that all passengers get down from the moving bus and that no passenger alights from the moving bus and that the passenger ought to have been instructed or warned suitably. No evidence has been let in by the Transport Corporation to prove that inspite of warning or instruction, the claimant attempted to alight from the moving bus.

7. When the respondent was aged about 60 years, both the driver and the conductor ought to have exercised due care and caution to see that the passenger alighted safely, before the bus was started from bus stand. In the light of the above

decisions and on analysis of evidence, this Court has no hesitation to sustain the finding fixing negligence on the driver of the Metropolitan Transport Corporation bus. Finding fixing negligence is sustained. Quantum of compensation is not challenged. Hence, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

8. Consequent to the dismissal of the appeal, the appellant Metropolitan Transport Corporation, is directed to deposit the award amount, with proportionate accrued interest and costs, less the statutory deposit, to the credit of M.C.O.P.No.4679 of 2011 on the file of the Motor Accidents Claims Tribunal (V Judge, Small Causes Court), Chennai, if not deposited earlier, within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the respondent/claimant is permitted to withdraw the entire amount, by making necessary application. 24.06.2014 Index: Yes/No Internet: Yes/No ars S.MANIKUMAR, J., ars To 1. The Motor Accident Claims Tribunal, (V Judge, Small Causes Court), Chennai.

2. The Section Officer, VR Section, High Court, Madras. C.M.A.No.1775 of 2014 and M.P.No.1 of 2014 24.06.2014

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