

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 22.07.2015

CORAM

THE HON'BLE MR.JUSTICE V.RAMASUBRAMANIAN

AND

THE HON'BLE MR.JUSTICE T.MATHIVANAN

C.M.A.No.1348 of 2015

and

M.P.No.1 of 2015

The Managing Director
Tamil Nadu State Transport
Corporation
3/137 Salamedu
Vashuthareddy, Villupuram.

...Appellant/Ist
Respondent

vs.

1.S.Krishnakumari
2.S.Magesh
3.R.Mangalam
4.S.Lingaiah
5.The Oriental Insurance Co. Ltd.
Subagovindham Building Imperial Road
Cuddalore-2.

...Respondents 1 to 5/
Petitioners 1 to 3/
Respondents 2 and 3

Prayer: Challenge is made, in this Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act 59/1988, to the award, dated 21.12.2012 and made in the Motor Accident Claim Petition in M.C.O.P.No.2362 of 2008 on the file of the Motor Accident Claims Tribunal, (Principal District Judge) at Cuddalore.

For appellant : Mr.S. Sairaman
For respondents
No.1 to 3 : M/s.Ramya V. Rao
For Respondent No.4: No appearance
For Respondent No.5 : Mr. S. Manohar

JUDGMENT

(Judgment of the Court
delivered by T. MATHIVANAN, J.)

This memorandum of civil miscellaneous appeal has been directed against the award, dated 21.12.2012 and made in the Motor Accident claim petition in M.C.O.P.No.2362 of 2008 on the file of the Motor Accident Claims Tribunal (Principal District Court), Cuddalore.

2. The Tamil Nadu Transport Corporation (Villupuram Division), who is the first respondent in the claim petition, is the appellant herein, whereas the claimants 1 to 3 are the respondents 1 to 3 herein. The fifth respondent Insurance Company is the third respondent in the claim petition.

3. The fourth respondent herein, who is the second respondent in the claim petition, being the owner of the lorry bearing Registration No.T.N-60-0138 had not chosen to contest the claim petition as he remained ex parte.

4. The respondents 1 to 3 being the wife, son and mother of the deceased R. Subramanian had filed a claim petition in M.C.O.P.No.2362 of 2008 on the file of the Motor Accident Claims Tribunal, (Principal District Court) Cuddalore, claiming totally a sum of Rs.50.00 lakhs towards the loss of the death of the deceased in a road traffic accident said to have been taken place on 23.4.2008 near Saram Spinning Mill at National High Road, at about 3.45 p.m.

5. The deceased R. Subramanian was working as Tahsildar. That on 23.4.2008 at about 3.45 p.m. when the deceased was sitting in his jeep bearing Registration No. TN-32-G-0347, which was stationed near Saram Spinning Mill at National High Road, the driver, who was on the steering wheel of the passenger bus bearing Registration No.TN-32-N-2617 belonging to the appellant/transport Corporation had driven the said bus in a hectic speed coupled with negligency and dashed against the lorry bearing Registration No.TN-60-0138, which was proceeding in front of the first respondent bus.

6. On account of the impact caused by the first respondent bus, the lorry was propelled further and made to hit against the jeep and as a result of which the jeep was capsized, which resulted in the death of the deceased and caused injuries to the inmates of the jeep.

7. On appreciation of the evidences both oral and documentary, the claims Tribunal had proceeded to award a sum of Rs.22,45,000/- to the respondents/claimants 1 to 3.

8. Having been aggrieved by the award passed by the Tribunal, the appellant/Transport Corporation stands before this Court with this civil miscellaneous appeal.

9. Heard Mr. S. Sairaman, learned counsel appearing for the appellant, M/s.Ramya V. Rao, learned counsel appearing for the respondents 1 to 3 and Mr.S. Manohar, learned counsel appearing for the respondent No.5.

10. Mr.S. Sairaman, learned counsel appearing for the appellant/Transport Corporation has projected his arguments on the following two Heads.

- a. Negligence and
- b. Quantum

11. Firstly, he has argued that the claim petition itself ought to have been dismissed for the non-impleadment of the owner of the jeep, viz., the Tamil Nadu Government, as the jeep was belonging to the Government of Tamil Nadu.

12. Secondly, he has argued that the Tribunal had lost its sight over the negligence contributed by the drivers of the jeep as well as the lorry.

13. He has also added that without considering this aspect, the Tribunal had wrongly gone to fix the negligency only on the driver of the passenger bus, which was absolutely against the principle of natural justice.

14. According to Mr.S.Sairaman, had the driver of the jeep been driven his vehicle with due care and caution observing the traffic regulations and watching the vehicles which were coming behind through the rear view mirror, the accident could have been averted.

15. Secondly, he has argued that on the fateful day, the lorry bearing Registration No.TN-60-138, which was proceeding in front of the appellant/Transport Corporation bus had dashed against the jeep bearing Registration No.TN-32-G-0347, which was suddenly crossing the road from left to right without minding the on coming vehicles and on account of this impact caused by the lorry on the rear side of the jeep, the jeep had turned turtle which resulted in the death of the deceased for which no negligence could be attached with the driver of the bus.

16. We have gone through the testimony of P.W.2 Gunasekaran, who happened to be an eye witness to the occurrence.

17. P.W.2 is none other than the driver of the jeep. According to him, he drove the jeep when the deceased R. Subramanian, Tahsildar, R.T.O. Kabiral and two other office assistants were travelling.

18. While so, he had stopped the jeep near Saram Spinning Mill. At that time, the appellant/Transport Corporation's bus came at a heavy speed coupled with negligence and hit behind the lorry, which was proceeding on the same direction in front of the bus.

19. On account of this impact, the lorry had hit against the rear side of the jeep which was stationed near the above said Mill and as a result of which the deceased Subramanian had sustained fatal injuries and died on the spot.

20. Though R.W.2, who was the driver of the bus, had given evidence denying the testimony of P.W.2, we, on thorough scrutinisation of the materials placed before us, find that no credence could be attached with the evidence of R.W.2. Based on the evidence of P.W.1 as well as P.W.2, the claims Tribunal had proceeded to fix the negligency on the driver of the appellant/Transport Corporation bus.

21. We are also in harmonious agreement with the finding of the Tribunal.

22. On coming to the argument of Mr.S. Sairaman on the head of quantum, we have meticulously analysed the calculation made by the Tribunal, for arriving at the quantum.

23. It is pertinent to note here that at the time of occurrence, on the basis of post mortem certificate (Ex.P.5), the Tribunal had determined the age of the deceased at 54, which was not seriously disputed by the respondents/claimants.

24. As per Exs.P.7 and P.8 Pay Certificates, which were marked through P.W.3 T. Sathyamoorthy, Assistant of Taluk Office, Tindivanam, the Claims Tribunal had fixed the monthly income of the deceased at Rs.25000/-. The annual income of the deceased has been calculated at Rs.3.00 lakhs.

25. Since the deceased had succumbed to his injuries at the age of 54, as per Sarla Verma's case, the Tribunal had adopted multiplier of 11. After deducting 1/3rd towards the personal expenses of the deceased, the 2/3rd remainder would be Rs.2.00 lakhs.

26. Accordingly, the dependency of the family has been calculated at Rs.22.00 lakhs (Rs.2.00 lakhs x 11 = Rs.22.00 lakhs).

27. Besides this, the Tribunal has also awarded certain amounts under the following Heads:-

- | | |
|--|-------------|
| 1. Towards Love and Affection | Rs.30000/- |
| 2. Funeral Expenses | Rs. 2500/- |
| 3. Towards Ambulance Charges | Rs. 2500/- |
| 4. Towards Consortium to the first respondent/claimant | Rs.10,000/- |

28. Totally, it comes to Rs.22,45,000/-, which according to our view, is very much reasonable, which does not require our interference.

29. In the result, the appeal is dismissed confirming the award, dated 21.12.2012 and made in M.C.O.P.No.2362 of 2008. The appellant/Transport Corporation is directed to deposit this amount, if not deposited earlier, within a period of six weeks from the date of this judgment and on such deposit being made, the respondents 1 to 3/claimants are entitled to withdraw their respective shares as directed by the Claims Tribunal without making any formal application. However, there will be no order as to costs. Connected M.P. is also dismissed.

Sd/-

Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

To,

The Motor Accident Claims Tribunal
(Principal District Judge)
Cuddalore.

+1 cc to Mr.S.Sairaman, Advocate sr.36992
+1 cc to M/S.Ramya V.Rao, Advocate sr.37445
+1 cc to Mr.S.Manohar, Advocate sr.37208

C.M.A.No.1348 of 2015
and
M.P.No.1 of 2015

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