

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 16.12.2015

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A. No.2711 of 2015
& M.P.No.1 of 2015

Metropolitan Transport Corporation Ltd.,
represented by its Managing Director,
No.2, Anna Salai, Chennai-600 002 ... Appellant/Respondent

Versus

1.M.L.Bhagyalakshmi
2.M.Lokeshwara Rao ... Respondents/Petitioners

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 19.08.2014 made in M.C.O.P.No.4978/2011 on the file of the Motor Accidents Claims Tribunal, (III Judge, Small Causes Court), Chennai.

For Appellant : Mr.S.S.Swaminathan

J U D G M E N T

The Civil Miscellaneous Appeal, filed by the appellant/Transport corporation, is directed against the correctness of the impugned award dated 19.08.2014 made in M.C.O.P.No.4978/2011 on the file of the Motor Accidents Claims Tribunal, (III Judge, Small Causes Court), Chennai, awarding a sum of Rs.9,00,000/- as against the claim of Rs.10,00,000/-, for the loss of life of the deceased, who died in the accident at the age of 26 years as bachelor. Aggrieved by the impugned award, Transport Corporation has preferred this appeal.

2.According to claimants, on 16.06.2010 at about 11.15 a.m., while the deceased was riding his motor cycle bearing Regn. No.TN 05Z 9794 at Chennai, Kamarajar Road from South to North direction, opposite to Light House, the appellant Transport Corporation bus bearing Registration No.TN 01 7801 was driven by its driver in a rash and negligent manner at the said road on the same direction, dashed against the said motor cycle and as a result of which, their son was thrown out and sustained fatal injuries. The driver of the appellant bus is solely responsible

for the cause of accident. Due to sudden death of the deceased, the claimants, who are mother and father of the deceased respectively, have lost their son. They claimed a sum of Rs.10,00,000/- as compensation. The appellant/Transport Corporation resisted the claim.

3.After considering the oral and documentary evidence, the Tribunal held that the accident had occurred only due to the rash and negligent driving of the driver of the appellant-Transport Corporation bus and awarded a sum of Rs.9,00,000/- as compensation payable to the claimants with interest at the rate of 7.5%. Aggrieved by that award, the appellant-Transport Corporation has filed the present appeal.

4.Heard Mr.S.S.Swaminathan, learned counsel for the appellant and perused the documents on record. On the side of claimants, P.Ws.1 and 2 were examined and documents Exs.P1 to P8 were marked. On the side of the appellant/Transport corporation, the conductor of the appellant Transport Corporation bus was examined as R.W.1 and no document was marked.

5.Learned counsel appearing for the appellant/Transport Corporation would submit that when the deceased himself overtook the appellant Transport Corporation bus and he lost his control and fell down and sustained fatal injuries in between the bus and another van, the Tribunal has wrongly come to the conclusion and held that the accident had occurred due to the rash and negligent driving of the driver of the appellant Transport Corporation. Thus, the Tribunal has miserably failed to consider this vital aspect and as a result of which, a huge amount of Rs.9,00,000/- has been awarded as compensation. Adding further, he would submit that the Tribunal ought not to have fixed Rs.10,000/- as notional monthly salary, without any materials to substantiate the same, especially when the deceased was a fresh entrant as an Advocate and it ought to have fixed the income of the deceased at Rs.7,500/- per month. Learned counsel appearing for the appellant heavily contended that though the conductor of the bus was examined as R.W.1, he was not cross examined by the claimant's side, which shows that the claimants were not prepared to meet the crucial witness, who travelled in the Transport Corporation Bus, at the time of accident. Therefore, the impugned order is liable to be interfered with.

6.This Court is not able to accept the contention made by the learned counsel appearing for the appellant. When their argument is that the conductor of the bus has not been cross

examined by the claimants' side, it is not known why there is no explanation from the appellant's side to justify the reason for not producing the driver of the offending vehicle. Therefore, the Tribunal has rightly come to the conclusion that the driver of the bus is the proper person to speak about the manner of accident. But there was no other witnesses examined in support of the evidence of R.W.1, conductor of the bus. Besides, the Tribunal, on scrutinising Ex.P2/F.I.R., registered against the driver of the bus and also by taking note of the evidences of P.W.1 and P.W.2, has come to the conclusion that the appellant Transport Corporation bus was wholly responsible for the accident. Therefore, the contention made by the learned counsel for the appellant that the Tribunal has not properly considered the manner of accident, has to be thrown out, as without any merits. The Tribunal, while fixing quantum of compensation, considering the age of the mother of the deceased, aged about 45 years, as per the II Schedule of the Motor Vehicles Act, applied proper multiplier '13'. With regard to the deduction, since the claimants placing on record the Identity Card of the Bar Council, which was marked as Ex.P6 and claimed that the deceased was practicing as an Advocate in the High Court of Madras and was earning a sum of Rs.20,000/- per month at the time of accident, the Tribunal fixed Rs.10,000/- as notional monthly income of the deceased and deducted 50% of his salary towards his personal expenses, based on the principles laid down in the case of Sarala Varma and others vs Delhi Transport Corporation and another reported in 2009 (2) TN MAC Volume 2 at Page 1 and arrived at a sum of Rs.7,80,000/- under the head 'pecuniary loss'. Thus, the same is hereby confirmed.

7. Further it is seen that the Tribunal has awarded a sum of Rs.1,00,000/- towards loss of love and affection and Rs.20,000/- towards funeral expenses, which in my view cannot be disturbed, for, had the deceased not died in the accident, he would have lived for full span of his life and would have contributed substantially to his parents, by working hard, however, now due to his sudden demise, they are left to lurch, hence, this Court, by way of applying the principles of just and reasonable compensation, hereby confirms the above said compensation awarded by the Tribunal.

8. Accordingly, the Civil Miscellaneous Appeal fails and the same is dismissed. No costs. Consequently, Connected miscellaneous petition is closed.

9. Since the learned counsel for the appellant submitted that the appellant has deposited Rs.25,000/- towards statutory deposit, the balance amount is directed to be deposited within a

period of four weeks from the date of receipt of a copy of this order. On such deposit, it is for the claimants to move a petition before the Tribunal for withdrawing the said amount.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

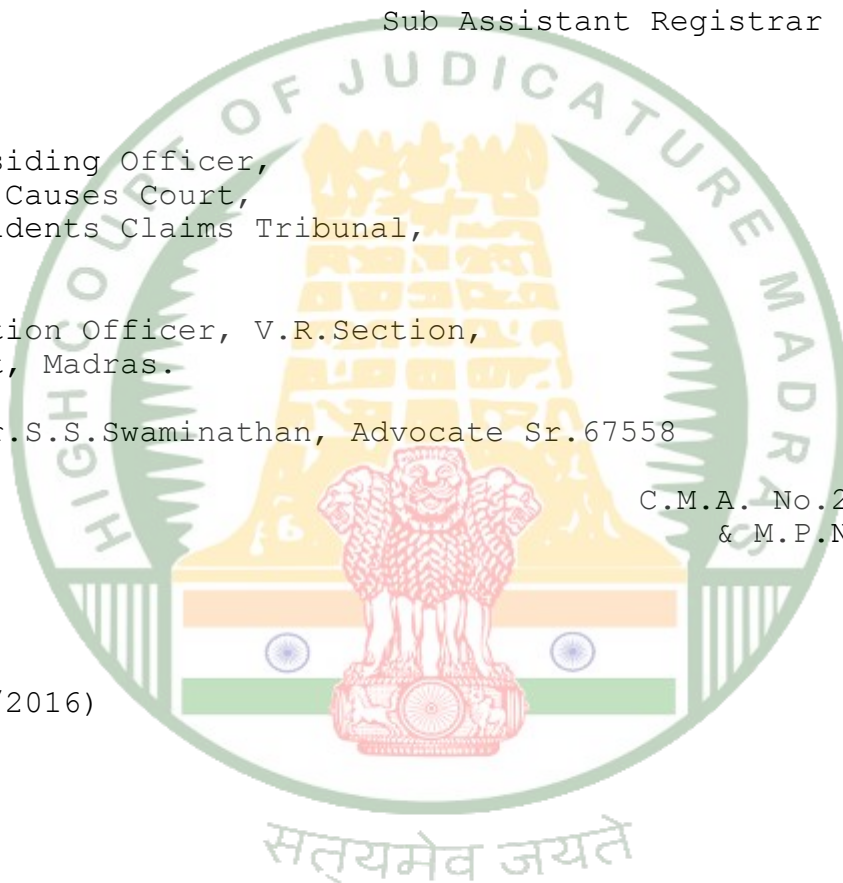
1.The Presiding Officer,
III Small Causes Court,
Motor Accidents Claims Tribunal,
Chennai.

2.The Section Officer, V.R.Section,
High Court, Madras.

+1cc to Mr.S.S.Swaminathan, Advocate Sr.67558

C.M.A. No.2711 of 2015
& M.P.No.1 of 2015

kk(CO)
srg(05/05/2016)



WEB COPY