

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 16/9/2016

C O R A M

The Honourable **Mr.Justice S.Manikumar**
and
The Honourable **Mr.Justice N.Authinathan**

Civil Miscellaneous Appeal No.2130 of 2016

The Managing Director
Tamil Nadu State Transport Corporation Ltd
Coimbatore Division I
37 Mettupalayam Road
Coimbatore.

...

Appellant

Vs

1. S.Saraswathi

2. S. Rajesh Kumar

3. Arun Prasad

4. S. Bala Krishnan

5. B. Selvam

...

Respondents

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 28/8/2010, passed in M.CV.O.P.No.314 of 2009, by the learned Sub-Judge, Motor Accident Claims Tribunal, Udumalpet.

For appellant : Mr.S.S.Swaminthan

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J U D G M E N T

Judgment of the Court was made by S.Manikumar,J)

Challenge in this appeal is to the judgment and decree made in M.C.O.P.No.314 of 2009, dated 28/8/2010, on the file of the learned Sub-Judge, Motor Accident Claims Tribunal, Udumalpet.

2. Short facts leading to the appeal are that on 14/12/2008, when Soundararajan, husband of the first respondent was travelling in a Tata Sumo vehicle, bearing Registration No.TN46B-3031, with his relatives, on the left side of Pollachi to Palladam road, near Sirukalanthai Marico Company, a transport Corporation bus bearing Registration No.TN38N-1656, driven in a rash and negligent manner by its driver, dashed against the Tata Sumo. Soundararajan has sustained grievous injuries and died on the spot. Others suffered injuries.

3. A case in Crime No.338 of 2008 has been registered against the driver of the Corporation bus, under Sections 279, 337 and 304 A of IPC.

4. Wife, children and parents of the deceased filed M.C.O.P.No.314 of 2009, on the file of the learned Subordinate Judge, Udumalpet, claiming compensation of Rs.25 lakhs. According to them, at the time of accident, the deceased was a Special Officer in State Bank of India, at Poolavadi, and earned Rs.25,000/- p.m.

5. Transport Corporation, denied the manner of accident and negligence attributed on the driver of the bus. They further submitted that on 14/12/2008, the bus, bearing Registration No.TN38N-1656, was proceeding from Pollachi and proceeded towards Tirupur. When the bus was nearing a Company, at the place Sirukalandai, a Tata Sumo van, bearing Registration No.TN46B-3031, coming in the opposite direction, and driven in a rash and negligent manner, dashed against the right side of the bus. Thus, the Corporation attributed negligence on the driver of TATA Sumo van. Without prejudice to the above, they disputed the quantum of compensation claimed under various heads.

6. There were other claim petitions by the injured. Common evidence has been adduced. Ex.P.1 is the First Information Report registered against the driver of the transport Corporation bus, bearing Registration No.TN38N-1656. Ex.P.2 is the charge sheet filed against him. P.W.3 Saraswathi is the legal representative of the deceased. Injured, who travelled in the van has adduced evidence regarding the manner of accident. Documents have been filed by the injured supporting the compensation claimed. Ex.P.21 salary certificate has been marked, to prove the employment of the deceased. On the side of the transport Corporation, R.W.1 driver of the transport Corporation has been examined.

7. Evaluating the oral and documentary evidence, the Tribunal held that the driver of the transport Corporation bus bearing Registration No.TN38N-1656, was negligent in causing the accident. Based on the oral testimony of P.W.3, wife of the deceased and Ex.P.21, salary certificate, the Tribunal has awarded compensation of Rs.21,35,000/-, with interest, at the rate of 7.5%, from the date of claim, till realisation, as hereunder.

Loss of Love and affection to the wife ... Rs. 10,000/-

Loss of Love and affection to the

children and parents (Rs.10,000/- each)	...	Rs. 40,000/-
Loss of contribution to the family	...	Rs.20,80,000/-
Funeral expenses 5,000/-	...	Rs.

		Rs.21,35,000/-

8. Aggrieved by the finding, fixing negligence on the driver of the transport Corporation bus, bearing Registration No.TN38N-1656, instant appeal has been filed.

9. Though Mr.S.S.Swaminathan, learned counsel for the appellant, assailed the correctness of the finding, on the grounds that the Tribunal has erred in arriving at the above said conclusion, solely on the basis of FIR and charge sheet laid against the bus driver and that the Tribunal has failed to consider that the driver of the Tata Sumo vehicle was equally responsible for causing the accident and therefore, the Tribunal ought to have held contributory negligence between the drivers of the two vehicles, this Court is not inclined to accept the said contention, for the reason that the test to be applied by the Tribunal/Courts, to arrive at a finding of negligence is preponderance of probability and not strict evidence.

10. Ex.P.1 FIR has been lodged against the driver of the Transport Corporation bus. On investigation, the Police has laid Ex.P.2

charge sheet against the driver of Tata Sumo. The injured, who had witnessed the accident, also have deposed, as to the manner of accident, duly corroborated by Exs.P.1 and P.2 stated supra.

11. While assessing the evidence of R.W.1, driver of the bus, the Tribunal has also observed that no complaint was preferred by R.W.1 against the driver of Tata Sumo vehicle. Even the averments that the driver of Tata Sumo came, crossed the middle of the road and thus dashed against the bus, is not supported by any independent witness. Testimony of R.W.1 is not corroborated. On the contra, testimony of P.W.3 is duly supported and corroborated. Testing the finding on the preponderance of probability, we find no perversity in the finding of negligence on the driver of the transport Corporation bus.

12. On the aspect of quantum of compensation awarded to the legal representatives of the deceased, Tribunal has taken into consideration, Ex.P.21 salary certificate, that at the time of accident, the deceased was a Special Officer in State Bank of India, Koolavadi and earned Rs.25,000/- p.m. Amount awarded under other heads is reasonable. Quantum of compensation awarded to the legal representatives, cannot be said to be on the higher side, warranting

interference. On the contra, quantum awarded under some heads is less.

13. In the light of the above discussion, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed. Tamil Nadu State Transport Corporation Limited, Coimbatore, is directed to deposit the entire award amount with proportionate interest and costs, less the statutory deposit to the credit of M.C.O.P.No.314 of 2009, on the file of Subordinate Judge, Udumalpet, within a period of eight weeks, from the date of receipt of a copy of this order.

14. Registry is directed to send a copy of this order to the Motor Accident Claims Tribunal-cum-Subordinate Judge, Udumalpet, and display in the notice Board that C.M.A.No.2130 of 2016 filed by the Managing Director, Tamil Nadu State Transport Corporation Limited, Coimbatore Division No.I, against the legal representatives of the deceased Soundarajan has been dismissed, with a direction, to the Corporation, to deposit the entire award amount, to the credit of M.C.O.P.No.314 of 2009, on the file of Subordinate Judge, Udumalpet, within a period of eight weeks, from the date of receipt of a copy of this order. Motor Accident Claims Tribunal is further directed to

mention the M.C.O.P number in the said notice. The Tribunal is directed, to disburse the amount only on proper identification and proof.

(S.M.K.,J) (N.A.N.,J)
16th September 2016.

mvs.

Index: yes/No

website: Yes/No.

To

1. The Motor Accident Claims Tribunal, XV Additional Judge, Chennai.
2. The Managing Director
Tamil Nadu State Transport Corporation (Salem) Limited
No.12 Ramakrishna Road
Dharmapuri 636 705.

S.MANIKUMAR,J

a n d

N.AUTHINATHAN,J

mvs.

C.M.A.No.2130 of 2016

16/9/2016