

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 28.09.2016

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THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A. No.2009 of 2016
& C.M.P.No.14578 of 2016

Tamil Nadu State Transport
Corporation,
Regional Office, Tirupur ... Appellant/Respondent

Versus

1.Machakalai
2.Santhosam
3.Minor Gowri Repted by her
Grandfather Machakalai
4.S.Kanakaraj ... Respondents/Petitioner 1-3/
Respondent

PRAYER in both cases: Civil Miscellaneous Appeal filed under
Section 173 of Motor Vehicles Act, 1988 against the judgment and
decree dated 04.03.2014 made in M.C.O.P.No.530/2013 on the file
of the Motor Accidents Claims Tribunal, (II Additional District
Judge), Tirupur.

For Appellant : Ms.R.T.Sundari
For Respondents: Mr.Ma.P.Thangavel for R1 to 3

JUDGMENT

The Tamil Nadu State Transport Corporation has filed the
present Civil Miscellaneous Appeal, challenging the correctness
of the impugned award dated 04.03.2014 made in
M.C.O.P.No.530/2013 on the file of the Motor Accidents Claims
Tribunal, (II Additional District Judge), Tirupur.

2.The case of the claimants is that on 25.02.2013 at about
20.30 hours, when the deceased trying to enter into a bus,
bearing Registration No.TN 39 N 0037, came from Ottansattram to
Tirupur, the driver of the bus, after seeing that the passenger
was proceeding into the bus, drove the bus rashly, as a result
the deceased fell down and sustained fatal injuries and died.
According to the claimants, the accident was happened due to the
rash and negligent driving of the driver of the bus.

3.Learned counsel appearing for the appellant/Transport Corporation, assailing the finding of the learned Tribunal, would submit that the deceased, who was a pedestrian, voluntarily invited the accident and contributed his negligence because when he was trying to get into the bus, without hearing the conductor's warning, he fell down, as he was in a drunken mood, while back door was opened suddenly. Therefore, there was a clear negligence and carelessness on the part of the deceased. Hence, no liability whatsoever can be fastened on the part of the appellant/Corporation. This fact was also drawn to the notice of the learned Tribunal by way of filing counter, making it clear that the deceased/pedestrian, without hearing the notice of the conductor's warning, fell down, as he was in a drunken mood. Due to the impact, he died and therefore, it was clearly established that the pedestrian, was on fault, himself voluntarily invited the accident and the claimants are not entitled to get any compensation. But, the learned Tribunal has over looked the said vital aspect. Secondly, the Transport Corporation, although has marked three vital documents namely, First Information Report marked as Ex.P.1, Accident Register, marked as Ex.P.2 and Post Mortem Report marked as Ex.P3 to prove the case of the Transport Corporation that the deceased/pedestrian, who was under drunken mood, was not able to notice the conductor's warning, fell down and died, the learned Tribunal has completely overlooked even the registration of F.I.R. against the deceased/pedestrian. Therefore, the learned Tribunal has committed serious mistake in fastening the vicarious liability on the Transport Corporation and hence the same is wholly untenable and impermissible in law.

4.Adding further she would submit that when the three vital documents namely, First Information Report marked as Ex.P.1, Accident Register, marked as Ex.P.2 and Post Mortem Report marked as Ex.P3, indicating clearly that the deceased/pedestrian was under drunken mood, at the time of accident, no negligence can be fixed on the driver of the bus, belonging to the Transport corporation. Ignoring all these things, the learned Tribunal has fixed the liability on the Transport Corporation and awarded a huge amount of compensation. Therefore, the same is liable to be set aside. Concluding her argument, she would submit that when there was no evidence produced to show that the deceased was earning a sum of Rs.7,500/-, on the oral evidence placed by the father of the deceased, who deposed as P.W.1, stating that the deceased was serving as Salesman in the TASMAL, earning a sum of Rs.10,000/-, the learned Tribunal has fixed Rs.7,500/- as notional monthly income. Therefore, the finding of the learned Tribunal in fixing the monthly income of the deceased, without any evidence, is liable to be interfered with.

5. Opposing the above said contentions, learned counsel appearing for the claimants would submit that the contentions made by the Transport Corporation that the deceased was found in a drunken mood, while he was walking on the road, was never substantiated by any oral or documentary evidence before the Tribunal. The reason is that it is a matter of record that the fourth respondent, who was a driver of the bus, belonging to the Transport Corporation, which caused the accident in question, being the right party to the lis, should have entered into the witness box and substantiated the version made in the F.I.R. When the claimants have specifically impleaded the driver of the bus, belonging to the Transport Corporation, who was the more important party, even after issuance of notice, for the reasons best known to him, never turned up. Therefore, the learned Tribunal has rightly set him exparte and came to the conclusion that the F.I.R. which was merely registered by a third party, cannot be taken as a reliable evidence and even the Post Mortem does not speak anything about the drunken status of the deceased and the Accident Register also equally failed to mention anything about the deceased. Therefore, the learned Tribunal has rightly come to the conclusion that the deceased was not in a drunken mood at the time of accident. When all the facts have been rightly arrived at on the basis of both oral and documentary evidence, it is not open to the Transport Corporation to challenge the same in appeal. I fully agree with this submission.

6. Answering the second contention that while fixing the loss of dependency, the learned Tribunal has wrongly fixed Rs.7,500/- as the notional monthly income, he would submit that the learned Tribunal, taking support from the pleadings made in the claim petition that the deceased was serving as Bar Salesman in the TASMAT at the time of accident and was earning a sum of Rs.2,500/- per week and considering the evidence adduced by the father of the deceased, who deposed as P.W.1 before the learned Tribunal, though the claim was made at Rs.10,000/-, has fixed Rs.7,500/- as notional monthly income of the deceased. Further the learned Tribunal has deducted 1/3rd thereof towards his personal expenses. As he belongs to the age group of 31 to 35, as per the ratio laid down by the Hon'ble Apex Court in the case of Sarla Verma (Smt.) and others vs. Delhi Transport Corporation and another reported in 2009 (6) SCC 121, a right multiplier '16' was adopted. However, while following the ratio laid down by the Hon'ble Apex Court in the case of Sarla Verma, no addition of 50% of actual salary has been made towards the future prospects.

7. At this juncture, learned counsel appearing for the Transport Corporation would submit that the addition of actual salary either 50% or 30%, has to be made only subject to the fact that the claimants were able to prove that the deceased was

getting regular salary with all authenticity. But in the present case, when there was no oral or documentary evidence like salary certificate or any other certificate issued by the Manager of the TASMAL, failure to add 50% of the actual salary, cannot be found fault with.

8.This Court is unable to find any merit on her contention. The reason is that when law demands the Tribunal to add requisite percentage either 50% in the case of the deceased below the age of 40 years or 30% in the case of above the age of 40 to 50 years, the learned Tribunal, rightly accepting Rs.7,500/- as notional monthly income, making 1/3rd deduction and by adopting right multiplier '16', ought to have added 50% towards the future prospects. However, towards the loss of love and affection for the daughter of the deceased, who was aged about 11 years, only Rs.60,000/- has been awarded. As this Court is able to see that reasonable compensation has been given, the impugned award is confirmed.

9.Since the learned counsel for the appellant/Transport Corporation submitted that the appellant has deposited Rs.25,000/- towards statutory deposit, the balance amount is directed to be deposited along with accrued interest 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 as apportioned by the learned Tribunal. Respondents 1 and 2 are entitled to withdraw their share amount as apportioned by the Tribunal.

10.As it is submitted by the learned counsel for the claimants that the third respondent/Gowri is the minor, the share of minor shall remain in fixed deposit in any one of Nationalised Banks till she attains majority and the first respondent/father of the deceased is entitled to withdraw the accrued interest once in three months.

11.Accordingly, the Civil Miscellaneous Appeal fails and the same is dismissed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1.The Motor Accidents Claims Tribunal,
(II Additional District Judge), Tirupur.

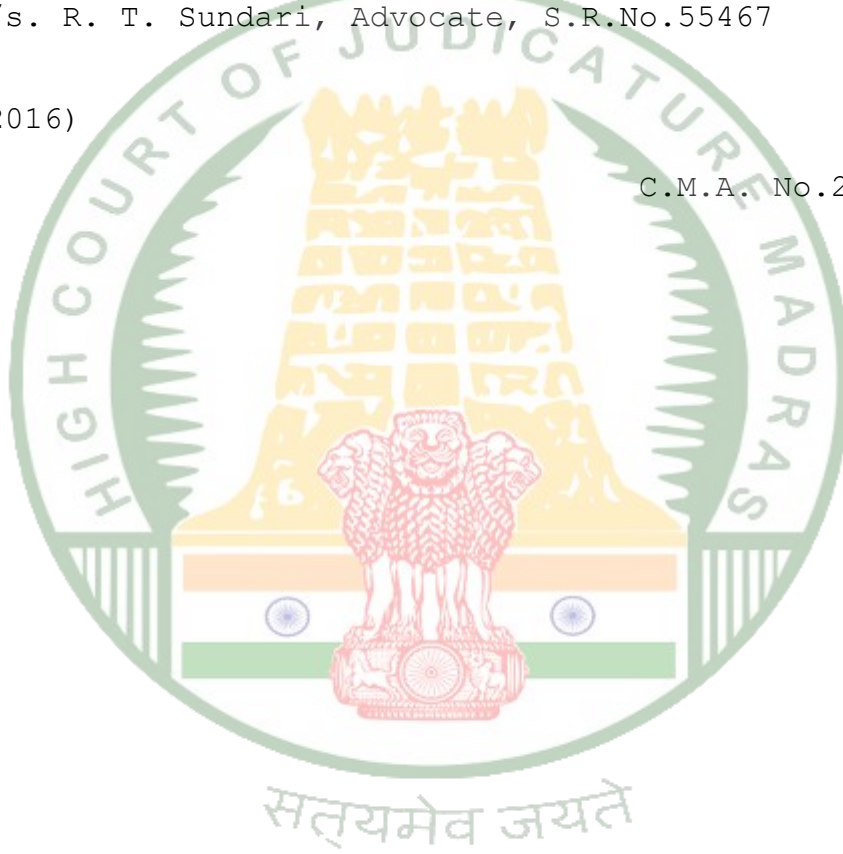
2.The Section Officer,
V.R.Section,
High Court, Madras.

+lcc to M/s. Ma.P. Thangavel, Advocate, S.R.No.55540

+lcc to M/s. R. T. Sundari, Advocate, S.R.No.55467

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EU(30/09/2016)

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