

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 20.01.2016

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THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A. No.1855 of 2015

The Managing Director,
Tamil Nadu State Transport
Corporation (Kumbakonam) Ltd.,
Peria Milaguparai,
Tiruchirappalli-620 001. .. Respondent/Appellant

Versus

1.Gunasekaran
2.Minor Arulrani
(Minor represented by his father
and next friend Gunasekaran) ... Petitioners/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 28.08.2014 made in M.C.O.P.No.225/2013 on the file of the Motor Accidents Claims Tribunal, (Principal District Judge), Perambalur.

For Appellant : Mr.D.Venkatachalam

For Respondents : Mr.T.Gobinath

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 28.08.2014 made in M.C.O.P.No.225/2013 on the file of the Motor Accidents Claims Tribunal, (Principal District Judge), Perambalur, in and by which the Tribunal has awarded a sum of Rs.9,07,000/- with 7.5% interest per annum, as against the total claim of Rs.10,00,000/- for the loss of life of the bread winner of the claimants.

2.According to claimants, on 17.12.2012 at about 10.15 p.m., at the New bus stand of Perambalur in front of Ooty Coffee Bar, while many passengers boarding the bus bearing Registration No.TN45-N-1976, when the deceased Ajith Kumar was attempting to board the appellant's Transport Corporation bus through front entrance, the duty Conductor whistled and the duty driver of the bus started the bus, without noticing whether all the passengers

were safely boarded, in a rash and negligent manner. As a result of which, the said deceased fell down and the left rear wheel of the bus ran over his head. Immediately after the accident, he was taken to Government Head Quarters Hospital, Perambalur, where on medical examination, he was found to be dead, as he succumbed to fatal injuries and post mortem was conducted at the said hospital. According to the claimants, the accident had happened only due to the rash and negligent driving of the driver of the appellant Transport Corporation bus. The claimants are father and sister respectively. 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.9,07,000/- 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.D.Venkatachalam, learned counsel for the appellant, Mr.T.Gobinath, learned counsel for the claimants/respondents and perused the document on record. On the side of the claimants, P.Ws.1 and 2 were examined and documents Exs.P1 to P5 were marked. On the side of the appellant/Transport Corporation, R.W.1-Sekar, the driver of the bus was examined and no documents were marked.

5. Learned counsel appearing for the appellant would submit that the accident had occurred only due to the carelessness on the part of the deceased, who got down from another running bus and lost his balance and as a result of which, he fell down on the rear wheel of the appellant's bus. He would further submit that as the evidence of the driver of the bus has been corroborated by Ex.P.1/F.I.R., the Tribunal ought to have considered the evidence of R.W.1, who is the driver of the bus and the competent person to speak about the accident. Adding further, he would submit that the Tribunal ought not to have considered the evidence of P.W.1, who is the father of the deceased and an interested witness. He would further submit that as the award passed by the Tribunal is not in accordance with law, the same has to be set aside.

6. This Court is not able to see any merits in the contention made by the learned counsel for the appellant. The reason is that the Transport Corporation had filed counter statement before the Tribunal, wherein it is stated that while the deceased was alighting from another moving bus, he lost his balance and fell down on the rear right wheel of the appellant transport Corporation bus. However, the Tribunal, on perusing

the evidence adduced by both sides, came to the conclusion that the deceased, while alighting from another bus on its back entrance, has lost his balance and fell down on the rear right wheel of the bus and thereby it has rightly come to the conclusion that the driver of the offending vehicle was responsible for taking away the life of the deceased. On this basis, the Tribunal has rightly fixed the negligence on the part of the driver of the offending vehicle. Therefore, this Court is not inclined to find any infirmity in such finding. The Tribunal, accepting the evidence of P.W.1/the father of the deceased, who deposed that the deceased was aged about 18 years and was earning Rs.10,000/- by doing Two wheeler Mechanic work and that the deceased had contributed the same to his family consisting of two dependents, has rightly fixed the notional monthly income of the deceased at Rs.6,000/-, by adding 30% towards future prospects and by deducting 50% towards his personal and living expenses and has rightly adopted multiplier '18', on the basis of the ratio laid down by the Hon'ble Apex Court in the case of Sarala Verma and others vs Delhi Transport Corporation and another reported in 2009 (2) TN MAC 1 (SC). With regard to the head 'loss of love and affection', only a meagre sum of Rs.20,000/- each viz. Rs.40,000/- has been awarded by the Tribunal and the same is confirmed. Similarly, a sum of Rs.10,000/- towards funeral expenses, Rs.5,000/- towards transport charges, Rs.10,000/- towards loss of estate, awarded by the Tribunal, are also confirmed, as it seems to be a reasonable one. Thus, the Tribunal awarded a sum of Rs.9,07,000/- towards total compensation for the loss of life of the bread winner of the claimants' family. Hence, this Court hereby confirms the impugned award passed by the Tribunal, 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 family. Accordingly, the Civil Miscellaneous Appeal fails and the same is dismissed. No costs. Consequently, Connected miscellaneous petition is closed.

7. Since the learned counsel for the appellant submitted that entire amount has already been deposited by the appellant, the claimants are permitted to withdraw the entire award amount, by moving appropriate petition.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

1. Motor Accidents Claims Tribunal,
(Principal District Judge), Perambalur

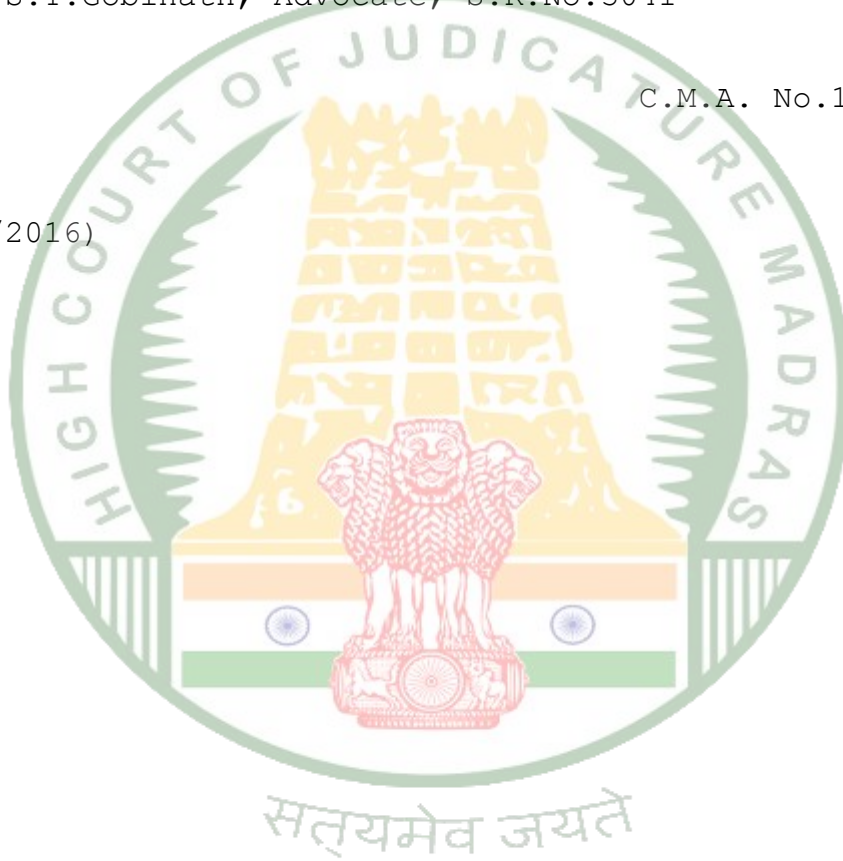
2.The Section Officer, V.R.Section,
High Court, Madras.

+lcc to M/S.D.Venkatachalam, Advocate, S.R.No.3175

+lcc to M/S.T.Gobinath, Advocate, S.R.No.3041

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rsk(CO)
srg(04/05/2016)



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