

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.10.2016

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THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.2103 of 2016

The Managing Director
Tamil Nadu State Transport
Corporation (Villupuram) Ltd.,
Kancheepuram Chennai to Bangalore Road
Ponnerikarai near Karapettai Post
Kancheepuram ..Appellant`/Respondent

-vs-

1. Tmt.P.Selvam
2. P.Samuvel
3. P.Jansi ..Respondents/Petitioner

Memorandum of Grounds of Civil Miscellaneous Appeal under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 21.03.2016 made in M.C.O.P.No.220 of 2014 on the file of the Motor Accident Claims Tribunal, (Subordinate Judge), Gudiyatham.

For Appellant::Mr.P.Paramasiva Doss

JUDGMENT

It is a case of death of 30 year old permanent employee serving as Setter cum Operator in Ideal Fasteners India Private Limited company, Tambaram, Chennai claiming to have earned a sum of Rs.25,000/- per month. However, accepting the monthly salary of the deceased after deduction at Rs.6,230/-, the Motor Accident Claims Tribunal (Subordinate Judge), Gudiyatham has awarded a total compensation of Rs.10,29,704/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation in M.C.O.P.No.220 of 2014. Aggrieved by the impugned award dated 21.3.2016, the Transport Corporation, being held liable for the tortious act of its driver in causing the accident and directing it to pay the compensation, has come to this Court challenging the question of negligence.

2. Mr.P.Paramasiva Doss, learned counsel for the appellant submitted that the legal heirs of the deceased made a claim that on 10.8.2014 at about 11.30 P.M., when Mr.B.Yovan was riding the two-wheeler bearing Registration No.TN 22 CX 4217 with pillion-rider, a bus bearing Registration No.TN 21 N 1668, driven by its driver in a rash and negligent manner, hit against the two-wheeler at Tiruttani road near Nedumaram, due to which the said Mr.B.Yovan sustained fatal injuries and died on the spot and that the pillion-rider Mr.Perumal sustained grievous injuries. Whereas, opposing that part of the claim, a detailed counter affidavit was filed by the Transport Corporation before the Tribunal taking a clear and specific stand that the rider of the two-wheeler alone was responsible for the accident, because he rode the vehicle with the headlight without using the indicator light. Moreover, he was not riding the two-wheeler carefully. Although the appellant had examined one T.Rosy from their side as R.W.1 to prove the negligence on the part of the deceased stating that he was riding the two-wheeler very rashly without using the indicator light and that the driver of the bus coming in the opposite direction stopped the vehicle at one side of the road, in the process, the accident had occurred, for which the driver of the bus belonging to the Corporation cannot be held responsible, this part of the evidence has not been properly appreciated by the Tribunal, as a result a patent error has crept in the award with regard to the finding as to negligence.

3. Since the Transport Corporation has not questioned the quantum, this Court could see from the findings and conclusions reached by the Tribunal that Mr.B.Yovan was riding the two-wheeler bearing Registration No.TN 22 CX 4217 with one Mr.Perumal as pillion-rider at the time of the accident. At the same time, a bus bearing Registration No.TN 21 N 1668 belonging to the appellant Corporation coming in the opposite direction had hit the two-wheeler, resultantly, due to the impact, both the rider and pillion-rider sustained fatal and grievous injuries. Immediately thereafter, a case in Crime No.310 of 2014 was registered on the file of D3 Kanagammachtram Police Station for the offence under Sections 279, 337 & 304(A) of IPC against the driver of the bus. Moreover, as there was no evidence adduced on the side of the Transport Corporation to establish the negligence on the part of the two-wheeler rider, the Tribunal, accepting the evidence of P.W.1, the mother of the deceased and analysing the stand taken in the First Information Report marked as Ex.P1 against the driver of the bus belonging to the Corporation, again placing reliance on the post-mortem report marked as Ex.P2, death certificate marked as Ex.P3, taking further corroboration from the evidence of P.W.2, has rendered a clear finding that the accident occurred on the fateful day only due to the rash and negligent driving by the

driver of the offending vehicle belonging to the Corporation. Therefore, when there is a clear and categorical finding by the Tribunal that only due to the careless driving by the driver of the bus belonging to the Corporation the accident had occurred, which took away the valuable life of the breadwinner in the claimants' family, who was contributing his income, it has fastened the liability on the appellant for the tortious act committed by its driver. Hence this Court is not able to find any infirmity thereon.

4. While coming to the award of compensation, when sufficient evidence was adduced to show that the deceased was working as Setter cum Operator in Ideal Fasteners India Private Limited Company, Tambaram and earning a sum of Rs.25,000/- per month and taking care of his family, the Tribunal has taken the take home salary of Rs.6,230/-. To prove that the deceased was earning a sum of Rs.10,075/- as his monthly income, the salary certificate was marked as Ex.P6 and the security officer from the private company was also examined as P.W.3 to support the monthly income of the deceased. In his evidence, he has also clearly deposed that the deceased-Yovan was serving in the post of Machine Operator and subsequently got promotion as Setter cum Operator and receiving a take home salary of Rs.6,230/- for the last seven years. Therefore, fixing Rs.6,230/- as the take home salary is made rightly as per the ratio laid down by the Apex Court in Sarala Verma's case, 2009 (2) TN MAC 1 (SC). As the deceased was a bachelor, while making deduction of 50% towards personal and living expenses, the Tribunal has also made the addition of 50% towards future prospects as per the said ratio and adopted the multiplier of '16'. Since the deceased is coming in the age group of 25-30, for which the right multiplier is '17', the Tribunal, having taken '16' as the multiplier, has arrived at a sum of Rs.9,04,704/- towards the loss of dependency. Further, it has fixed Rs.50,000/- towards loss of love and affection to the mother and Rs.25,000/- each to the brother and sister of the deceased. With regard to funeral expenses, a sum of Rs.25,000/- has been fixed. Therefore, this Court is not able to find any merit in the civil miscellaneous appeal. Accordingly, the civil miscellaneous appeal is dismissed. Consequently, C.M.P.No.15249 of 2016 is also dismissed.

5. As the learned counsel for the appellant submitted that only the statutory amount of Rs.25,000/- has been deposited, the appellant is directed to deposit the entire balance award amount along with accrued interest to the credit of the M.C.O.P.No.220 of 2014 on the file of the Motor Accident Claims Tribunal (Subordinate Judge), Gudiyatham within a period of four weeks from the date of receipt of a copy of this order and on such

deposit, it is for the claimants to withdraw the apportioned amount along with accrued interest by moving appropriate applications before the Tribunal.

Sd/-
Assistant Registrar(CS VI)

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Sub Assistant Registrar

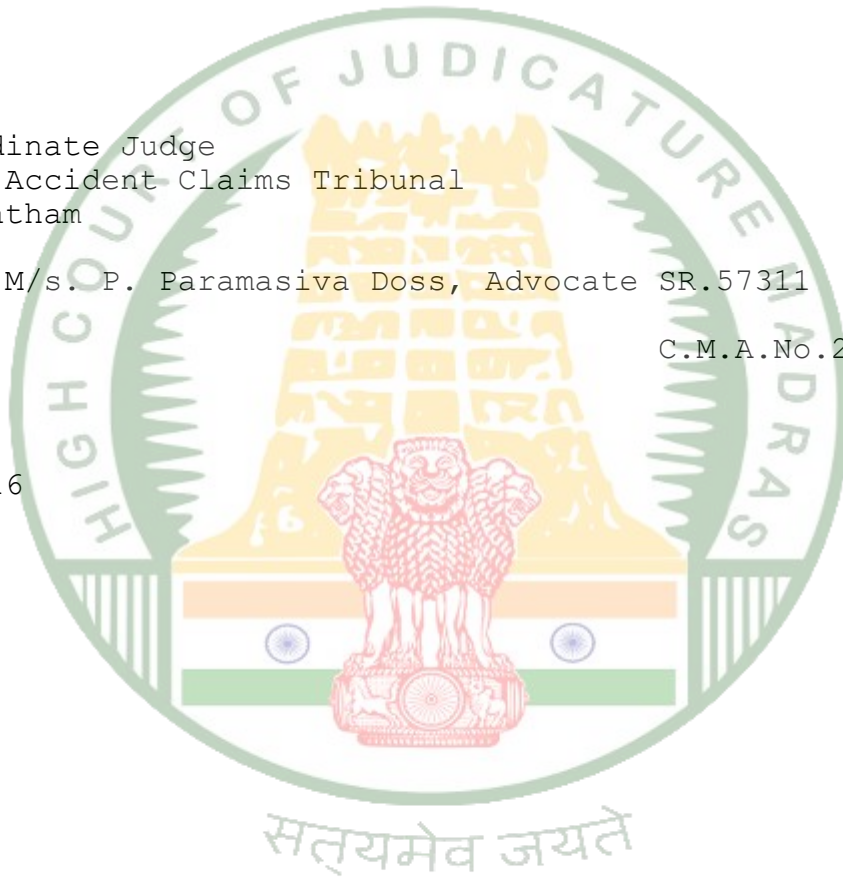
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To
The Subordinate Judge
Motor Accident Claims Tribunal
Gudiyatham

+ 1 cc to M/s. P. Paramasiva Doss, Advocate SR.57311

C.M.A.No.2103 of 2016

SVI(CO)
EU 24.11.16



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