

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 20.10.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A. No.2363 of 2016

& C.M.P.No.16347 of 2016

Tamil Nadu State Transport Corporation,
Rep. By its Managing Director,
Vellore. .. Appellant/Respondent

Versus

1.Chinnappan
2.Jayachitra
3.Udayakumar .. Respondents/Petitioner

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988 against the judgment and decree dated 31.03.2016 made in M.C.O.P.No.115 of 2014 on the file of the Motor Accidents Claims Tribunal, (III Additional District Judge) at Tirupattur, Vellore District.

For Appellant : Mr.S.Sairaman

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 31.03.2016 made in M.C.O.P.No.115 of 2014 on the file of the Motor Accidents Claims Tribunal, (III Additional District Judge) at Tirupattur, Vellore District.

2.According to the claimants, on 21.06.2012, at about 15.00 hours, when the deceased was standing near the back side foot board in the bus bearing Registration No.TN-23-N-2170 belonging to the appellant Transport Corporation, driven by its driver in a rash and negligent manner in the Tirupattur-Bargur Koot road in Bargur, due to rash driving, the deceased was thrown out from the bus and sustained grievous injuries. She was immediately taken to Government Quarters Hospital Krishnagiri and admitted as inpatient and after treatment, she was taken to NIMHANS, Bangalore and thereafter, taken to the Narayana Super Specialty Hospital, Bangalore and admitted there as inpatient. After discharge from the above said hospital, she continued her treatment as outpatient in the private hospital at Krihsnagiri. In spite of treatment, she died on 17.11.2012. According to the

claimants, the accident had happened due to the rash and negligent driving of the driver of the bus.

3.Learned counsel appearing for the appellant/Transport Corporation would submit that the finding of the learned Tribunal in respect of the negligence aspect, is contrary to the evidence on records. Adding further, he would submit that the learned Tribunal, only relying upon the evidence of the claimant's side, who are only the interesting witnesses, has given such a wrong finding. The learned Tribunal has failed to appreciate the oral and documentary evidence on the aspect of negligence, which clearly shows that the deceased was wholly responsible for the accident. He would further submit that when the deceased was standing near to the back side foot board in the bus, the driver following the traffic rules has driven the bus with care and caution, but due to her carelessness and negligent act of the deceased as she was travelling near to the foot board,, she fell down on her own. As a result, she died. He would further submit that the Tribunal showing sympathy to the deceased allowed the claim petition and awarded a sum of Rs.8,28,750/- which is an exorbitant one and the same is liable to be set aside.

4.Adding further, he would further submit that the accident had occurred only due to the carelessness of the passenger which can be evidentially seen from the claim petition that at the time of accident, she was standing near to the foot board and it clearly supported the case of the appellant. But the Tribunal has failed to appreciate the same and the finding of the Tribunal in respect of negligence, against the driver of the bus, holding that the accident has occurred only due to the rash and negligent driving of the driver, is highly misconceived.

5.This Court does not find any merit on the contentions made by the learned counsel for the appellant/Transport Corporation. If a passenger travels in the foot board, the driver and the conductor of the bus should advice her/him to get inside the bus to a safer side, failing which such a passenger should have offloaded from the bus, whereas in the present case, the same has not been followed because no contra evidence was produced. On 21.06.2012 after remitting the EB charges in the EB Office, Bargur, the deceased boarded the bus bearing Registration No.TN-23-N-2170, belonging to the appellant/Transport Corporation to go to Bargur as a fare paid passenger. There were heavy crowd of passengers in the bus. Therefore, the deceased was also standing near to the back side of the bus. At that time, the driver of the bus swerved the bus in a rash and negligent manner in Tiruppattur-Bargur Koot road in Bargur-Tirupattur Road. Only due to the rash and negligent driving of the bus, the deceased who was standing in the bus near to the back side of the foot board was thrown out from the bus and sustained injuries. When such finding has been given by the learned Tribunal, no evidence or any contra evidence or acceptable argument was placed before

this Court. Secondly, the learned Tribunal, considering the age of the deceased, aged about 55 years who also was serving as coolie in 100 days programme and doing milk business, has rightly come to the conclusion that the deceased would have earned Rs.300/- per day and she would have worked for 20 days in a month and thereupon rightly arrived at Rs.6,000/- p.m. as total monthly income. After fixing the notional monthly income of the deceased, the Tribunal has rightly deducted 1/3rd amount for her personal expenses and the actual income to the family comes to Rs.4,000/-. The deceased was aged about 55 years at the time of accident and therefore, for the age group about 50 years, as the deceased was 55 years as per the Postmortem Certificate Ex.P2, the learned Tribunal has rightly applied the multiplier '11' and finally the actual loss of income of the deceased to the family works out to Rs.5,28,00/- (Rs.4000 x 12 x 11). With regard to loss of love and affection, a sum of Rs.60,000/- has been awarded. Similarly, the claimants were able to file a bunch of medical bills marked as Exs.P7,P8,P9,P10 and P11 and a sum of Rs.2,18,102/- awarded towards medicals expenses cannot be found fault with. The Tribunal has awarded a sum of Rs.7,650/- under the head 'transportation' and a sum of Rs.15,000/- under the head 'Funeral Expenses', which are reasonable and the same are hereby confirmed.

6. 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 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 learned Tribunal for withdrawing of the said amount.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

To
The Motor Accidents Claims Tribunal,
(Additional District Judge No.III,Tirupattur),
Vellore.

+1 cc to Mr.S.Sairaman,advocate,sr.59542.

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krd 25/1

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