

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.02.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUDHAKAR
and
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

C.M.A.No.377 of 2016
and C.M.P.No.2883 of 2016

The Managing Director
Tamil Nadu State Transport
Corporation, Ariyalur Branch,
Ariyalur & District.

... Appellant/Respondent

vs.

1. Tmt.Chitra
2. Minor Balamurugan
3. Minor Agalya
4. Thiru Azhagirisami
5. Tmt.Senbagavalli
(2nd and 3rd minors rep by
next friend & mother 1st
respondent Chitra)

....Respondents/Petitioners

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 11.07.2013 passed in M.C.O.P.No.114 of 2010 on the file of the Motor Accidents Claims Tribunal, Subordinate Judge, Mannargudi.

For Appellant : Mr.D.Venkatachalam

JUDGMENT

(Judgment of the Court was delivered by R.SUDHAKAR,J.)

The Tamil Nadu State Transport Corporation is on appeal challenging the award dated 11.07.2013 passed in M.C.O.P.No.114 of 2010 on the file of the Motor Accidents Claims Tribunal, Subordinate Judge, Mannargudi.

2. It is a case of fatal accident. On 19.06.2009, at about 07.30 p.m., when the deceased Pandiyan, who was working as a conductor in the appellant Corporation bus bearing No.TN 45

2030, was issuing tickets, the driver of the bus applied sudden break, as a result, the deceased Pandiyan was thrown out of the bus and sustained fatal injuries and died instantaneously. The claimants, who are wife aged 26 years, minor children, aged 7 years and 4 years respectively, father, aged 73 years and mother, aged 58 years of the deceased have filed a claim for compensation for a sum of Rs.25,31,000/-. According to the claimants, the deceased Pandiyan was a conductor in the appellant Corporation bus and was earning a sum of Rs. 9,195/- per month.

3. In support of the claim, the wife of the deceased was examined as P.W.1; one Muralidharan, stated to be eye witness to the accident, was examined as P.W.2 and Ex.P-1 to Ex.P-7 were marked, the details of which are as follows:-

Ex.No.	Date	Details
P1	19.06.2009	First Information Report
P2	21.06.2009	Motor Inspection Report
P3	20.06.2009	Post Mortem Report
P4	...	Salary Bill
P5	20.06.2009	Post Mortem Certificate
P6	07.08.2009	Legal Heirs Certificate
P7	01.07.2009	Death Certificate.

On behalf of the appellant Transport Corporation, Karthikeyan, driver of the appellant Corporation bus was examined as R.W.1 and the judgment pronounced in C.C.No.175 of 2009 was marked as Ex.R.1, in which, the driver was acquitted from the criminal case.

4. The Tribunal, based on the oral evidence of the witnesses and the F.I.R., came to conclusion that the driver of the appellant Transport Corporation bus had driven the vehicle in a

rash and negligent manner and was responsible for the accident and consequently liability was fixed on the appellant Transport Corporation to compensate the claimants.

5. Based on the oral and documentary evidence, the Tribunal granted the following amounts as compensation with interest at 7.5% per annum:-

Sl. No.	Head	Amount granted by the Tribunal
1	Loss of income	Rs.12,15,000/-
2	Loss of love and affection to 2nd and 3rd claimants	Rs. 20,000/-
3	Loss of love and affection to 4th and 5th claimants	Rs. 10,000/-
4	Loss of consortium	Rs. 10,000/-
5	Funeral expenses	Rs. 5,000/-
	Total	Rs.12,60,000/-

6. The only serious objection raised is with regard to the negligence fixed by the Tribunal. Based on the evidence of the eye witness, P.W.2, the Tribunal has come to the conclusion that the driver of the appellant Transport Corporation bus is responsible for the accident. The eye witness, being the passenger of the bus had clearly explained the accident that took place. The driver of the bus in his evidence had stated that since a bullock had crossed the road, he applied sudden break. At that time, the deceased Pandiyan was standing on the foot board of the rear portion of the bus. He further stated in his evidence that if the deceased Pandiyan was inside the bus, the accident could have been avoided.

7. It is relevant to note that during the course of avocation, it is the duty of the conductor, who is bound to issue tickets to the passengers, has to move up and down in the bus. Hence, the deceased Pandiyan has contributed to the accident cannot be accepted. If the driver of the bus had driven the vehicle diligently, the accident could have been averted. In such circumstances, the entire negligence is only on the part of the driver of the appellant Transport Corporation bus and there is no material to support the plea of contributory negligence on the part of the deceased Pandiyan. Hence, the finding of the Tribunal fixing the negligence on the driver of the appellant Transport Corporation bus has to be accepted without any doubt. Accordingly, the finding of the Tribunal with regard to the negligence is confirmed.

8. The quantum of compensation in this appeal is not in dispute. No appeal has been filed by the respondents. Therefore, the appellant - Transport Corporation is liable to compensate the claimants in its entirety as per the award of the Tribunal.

9. Learned counsel appearing for the appellant in this appeal prays eight weeks time to deposit the award amount and the same is allowed.

10. In the result, the above Civil Miscellaneous Appeal is dismissed with the following directions:

(i) The appellant in this appeal is granted eight weeks time to deposit the entire award amount along with interest and costs as per the order of the Tribunal.

(ii) On such deposit, the major claimants are permitted to withdraw the award amount as ordered by the Tribunal.

(iii) The award amount with regard to the minors shall be invested in any nationalised bank proximate to the place of the residence of the mother Chitra for a period of three years and renewable thereafter till the minors attain majority. The mother of the minors is permitted to withdraw the accrued interest once in three months directly from the bank and for the said purpose the mother of the minors shall open a savings bank account on the same branch and the interest amount shall be transferred to the account to be maintained by the mother.

(iv) The nationalised bank to which the amount will be deposited, shall intimate to the mother of the minors of such deposit and confirm the same to the Tribunal that the mother of the minor claimants has been duly informed. The Tribunal to inform the bank accordingly.

(v) There will be no order as to cost.

(vi) Consequently, connected CMP stands closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

The Subordinate Judge,
The Motor Accidents Claims Tribunal,
Mannargudi.

+1cc to Mr.D.Venkatachalam, Advocate, S.R.No.10701

C.M.A.No.377 of 2016
and C.M.P.No.2883 of 2016

pur (CO)
srg (08/03/2016)



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