



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 29.07.2016
CORAM:

THE HONOURABLE Mr. JUSTICE K.KALYANASUNDARAM

C.M.A. (MD) No.747 of 2016

and

C.M.P. (MD) No.7337 of 2016

WEB COPY

The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,,
Kumbakonam Division - I,
Kumbakonam.

... Appellant / Respondent

Vs.

1.Alagumayil
2.M.Balraj
3.M.Vijayalakshmi
4.M.Kanagavalli

... Respondents / Petitioners

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 24.12.2010 in M.C.O.P.No.1458 of 2005 passed by the Motor Accident Claims Tribunal / Chief Judicial Magistrate Court, Trichirappalli.

For Appellant : Mr.M.Prakash

JUDGMENT

This appeal is directed against the award dated 24.12.2010 passed by the Motor Accident Claims Tribunal / Chief Judicial Magistrate, Trichirapalli passed in M.C.O.P.No.1458 of 2005.

2.The legal heirs of the deceased Murugan filed the claim petition, seeking compensation of Rs.18 lakhs alleging that on 28.07.2004, the deceased was riding his motor cycle opposite to Ariyamangalam Alangar Theatre Bridge. At that time, the bus belonging to the appellant / Transport Corporation bearing registration No.TN-49/ No-853 came in a high speed, while overtaking another vehicle hit the motor cycle and the bus ran over the deceased. He succumbed to the injuries on 04.09.2004. A case in Crime No.248 of 2004 has been registered against the driver of the bus.

3.The appellant resisted the claim by contending that the deceased was overtaking a car parked on the road, however, the driver of the car without noticing the deceased suddenly opened the front door of the car, which hit the deceased, so he lost control of the vehicle and fell down on the left side of the bus. The accident had happened only due to rash and negligent and careless driving of the deceased. So they are not liable to pay compensation. The appellant has also disputed the age, occupation and monthly income of the deceased.



4. In support of their case, the claimants examined P.W.1 and marked Ex.P1 First Information Report. The appellant has not chosen to examine the driver of the bus and it was stated that he was not in service. The Tribunal accepting the evidence of P.W.1 and based on Ex.P1, rightly came to the conclusion that the accident occurred due to the negligence of the driver of the bus.

5. In the claim petition, it is stated that the deceased was 49 year old. But the postmortem certificate shows that he was 50 years at the time of accident. The claimants have not proved the income of the deceased. The Tribunal assessed the monthly income as Rs.4,500/- and after deducting one third towards his personal expenses held that he was contributing Rs.3,000/- to his family. Based on the age, the Tribunal has awarded Rs.4,68,000/- towards loss of dependency; Rs.27,000/- was awarded towards loss of love and affection; Rs.5,000/- towards funeral expenses; Rs.1,00,000/- towards medical expenses based on Exs.B10 to B13 and Rs.50,000/- to the 1st claimant towards loss of consortium. The Tribunal totally awarded Rs.6,50,000/- along with interest at the rate of 7.5% per annum.

6. I am of the view that the award passed by the Tribunal is fair and reasonable and I do not find any merit in this appeal.

7. In the result, the award of the Tribunal is confirmed and the Civil Miscellaneous Appeal is dismissed. The appellant / Transport Corporation is directed to deposit the entire award amount with accrued interest and costs, within a period of 8 weeks from the date of receipt of a copy of this judgment, less the amount already deposited if any. On such deposit being made, the claimants are permitted to withdraw the award amount with interest and costs as apportioned by the Tribunal.

No costs. Consequently, connected C.M.P. is closed.

Sd/-

Assistant Registrar (Records)

/True Copy/

Sub Assistant Registrar

To

The Motor Accident Claims Tribunal / Chief Judicial Magistrate,
Trichirappalli.

+ 1 CC TO Mr.M.PRAKASH, ADVOCATE IN SR No. 41018

NBJ

TE/SK-SKN : 18/11/2016 : 2P/3C