



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.09.2016

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THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A(MD) No.925 of 2016

and

CMP(MD)No.8386 of 2016

The Managing Director,
Tamil Nadu State Transport Corporation
(Madurai Division) Ltd.,
Madurai.

: Appellant/2nd respondent

Vs

1.Thirumalayachi
2.Palaniselvam @ Selvi.
3.Thirumalai Selvi
4.Saraswathi
5.Rajendran (Driver)

: R1 to R4/Petitioners

[5th Respondent is a driver of the
Appellant and exparte in the tribunal,
hence given up]

: R5/Respondent

Prayer : Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree passed in MCOP No.175 of 2009, dated 06th Day of July 2010, on the file of the Motor Accident Claims Tribunal/Principal Sub Court, Tenkasi.

For Appellant

: Mr.M.Prakash

JUDGMENT

This appeal has been preferred against the award of compensation of Rs. 3,39,300/- passed by the Motor Accident Claims Tribunal (Principal Subordinate Judge), Tenkasi, in MCOP No.175 of 2009, dated 06.07.2010.

2.According to the claimants, the deceased Madasamy Thevar is the husband of the first claimant and father of the claimants 2 to 4. On 07.06.1997 at 9.30 a.m, the deceased was proceeding in a bicycle along with his daughter Thirumalai Selvi @ Selvi near Sendamaram Panchayth office at Sendarman. At the time, the bus belonging to the appellant bearing registration No.TCB-7978, which was moving in the opposite direction in a rash and negligent manner, hit against the bicycle. In the process, the rider of the cycle Madasamy Thevar sustained fatal injuries and the 3rd claimant



sustained grievous injuries. A petition was filed claiming compensation of Rs.15,00,000/- alleging that the bus driver was responsible for the accident.

3.The appellant contended before the tribunal that on seeing the bicycle coming from the opposite direction, the driver of the bus slowed down the bus. While so, the deceased, who is the rider of the bicycle, in a negligent manner, dashed against the bus. So, the appellate Transport Corporation is not liable to pay any compensation.

4.Upon consideration of the oral and documentary evidence, the Tribunal held that the driver of the bus was responsible for the accident and awarded compensation of Rs.3,39,300/- together with interest @ 7.5% p.a. Challenging the said award, the present appeal has been filed.

5.Heard Mr.M.Prakash, the learned counsel appearing for the appellant Transport Corporation and perused the materials available on record.

6.The 2nd claimant has given evidence as PW1 and in her evidence, she has narrated the manner of the accident as set out in the claim petition. She also marked Ex.P1 the First Information Report, Ex.P3 report of the Motor Vehicle Inspector. Ex.P5 Accident Register. The tribunal based on the evidence, both oral and documentary, came to the conclusion that the bus driver caused the accident.

7.PW1 has further deposed that the deceased was doing hay business and thereby earning Rs.7,500/- per month. The evidence of PW1 and Ex.P2 postmortem certificate would show that the deceased was 47 years old on the date of the accident. The tribunal, after analysing the evidence, assessed the income of the deceased as Rs.3,000/- per month and his contribution as Rs.2,000/- to the family. Following the guidelines in Schedule II to the Motor Vehicles Act, the tribunal has adopted '13' and awarded Rs.3,12,000/- under the head of loss of income. In addition, the tribunal has awarded Rs.25,000/- towards loss of consortium, to the first claimant, who is wife of the deceased and Rs.30,000/- to the claimants 2 to 4 for loss of love and affection and Rs.10,000/- towards funeral expenses. In total, the tribunal has awarded **Rs.3,77,000/-** with interest @ 7.5% from the date of petition till the date of realisation. This court is of the considered view that the award of the tribunal is fair and reasonable.

8.In fine, the appeal is dismissed and the award of the Tribunal is confirmed. The appellant Transport Corporation is directed to deposit the entire amount together with the interest and costs within a period of eight weeks from the date of receipt of a copy of this order, if not deposited already. On such



deposit, the claimants are permitted to withdraw the entire amount as apportioned by the tribunal without filing any formal application before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

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Sd/-

Assistant Registrar(record)

Sub Assistant Registrar

To
The Principal Subordinate Judge,
Tenkasi.

+1cc to Mr.M.Prakash, Advocate SR.NO.49328

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Judgment made in
CMA (MD) No.925 of 2016
01.09.2016