

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15/6/2017

C O R A M

THE HONOURABLE Mr. JUSTICE S.MANIKUMAR
and
THE HONOURABLE Mr. JUSTICE M.GOVINDARAJ

C.M.A.No.1104 of 2015

1. The Commandant,
Tamil Nadu Special Police,
VII BN,
Pochampalli Town and Taluk,
Krishnagiri District - 635 206.
2. The State of Tamil Nadir,
Rep. By District Collector,
Collectorate Complex,
Bangalore Road,
Krishnagiri - 635 001. ... Appellants/Respondents 2 & 3

Vs.

1. Jaya @ Jayalakshmi
2. Premlatha
3. A.Prabhakaran
4. Minor A Lavanya,
Rep. by Mother and Next Friend
First Petitioner Jaya @ Jayalakshmi.
5. Nanjammal
6. K.Chinnasamy ... Respondents/Petitioners

Prayer: Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, 1988 to set aside the Judgment and Decree dated 29.01.2015, passed by the Motor accidents claims Tribunal (District Judge) Krishnagiri, in M.C.O.P.No.161 of 2013.

For appellants ... Mrs.M.Jayasree
Government Advocate

For Respondents ... Mr.R.Krishna Prasad
for M/s.Sarvabhauman Associates

J U D G M E N T

(Judgment of the Court was made by M.Govindaraj,J)

Challenging the award passed by the Motor Accident Claims Tribunal (Special Court), Krishnagiri, in M.C.O.P.No.161 of 2013, dated 29/1/2015, Commandant, Tamil Nadu Special Police, VII Battalion, Pochampalli, has preferred the instant appeal.

2. On 10/10/2010, when Annadurai was driving a motorcycle, bearing Registration No.TN-24-C-4154, in connection with marriage arrangements of his daughter, Premalatha, about 4.00 p.m., at Madhikonpalayam Red Lake Bund, a bus, bearing Registration No.TN-24-G-0464, belonging to the appellant Corporation, driven in a rash and negligent manner, dashed against the motorcyclist. Due to the impact and injuries, the motorcyclist, died on the spot. In this regard, a case in Crime No.1726 of 2010, under Sections 279, 304 (A) of the Indian Penal Code, has been registered, on the file of Dharmapuri Police Station, against the driver of the bus.

3. Legal representatives of the deceased have filed a claim petition in M.C.O.P.No.161 of 2013, on the file of the Motor Accident Claims Tribunal, Krishnagiri, for a sum of Rs.40,00,000/-, under various heads.

4. The appellants/respondents 2 and 3 herein contested the claim stating that the driver of the bus was not negligent, as he was driving the bus cautiously and on seeing the motorcyclist approaching the bus, rashly and negligently, halted the bus. But, the motorcyclist lost his control and collided on the right side of the bus. Further contention has been made that the motor cyclist was in a drunken mood and invited the accident, by hitting a stationary vehicle.

5. In order to prove the manner of accident, the claimants have examined P.Ws.1 to 3 and marked Exs.P1 to P7. On the side of the respondents, R.Ws.1 and 2 have been examined and Exs.R.1 to R.2 have been marked.

6. Adjudicating the issue of negligence and evaluating the oral and documentary evidence, adduced by both parties, the Tribunal disbelieved the evidence of R.W.1, by observing that it was made with a oblique motive, to avoid criminal prosecution against the officials of Police Department, the Tribunal came to the conclusion that the driver of the bus belonging to the appellant, drove the vehicle, bearing Registration No.TN04G-0464, in a rash and negligent manner, and caused the accident.

7. Though Mrs.M.Jayasree, learned Government Advocate, appearing for the appellant submitted that the decision of the Tribunal is erroneous, learned counsel appearing for the respondents argued that the first respondent in the claim petition, being an employee of the second respondent, under the control of the Government of Tamil Nadu, driven the bus for the purpose of giving security to the then Hon'ble Chief Minister of Tamil Nadu and that the bus would have been driven at a high speed, in order to give protection to the VIP. According to him, there was no possibility of the bus, halting, and the two wheeler hitting a stationary vehicle.

8. From the material on record, it could be seen that the First Information Report filed against the driver of the bus has been closed, even without examining the complainant. Closure of the First Information Report as mistake of fact, by the Investigation Officer, in order to avoid the criminal prosecution and disciplinary proceedings against the serving Police official, has been held erroneous, by the Tribunal.

9. Considering the material before us, we are of the opinion that the Tribunal has rightly appreciated the evidence on the aspect of negligence and has come to the conclusion that the driver of the bus was rash and negligent, in causing the accident. Statement that the bus was engaged for the purpose of giving security cover to the then Hon'ble Chief Minister is not disputed. It is probable that escort and pilot vehicles, as well as vehicles carrying security personnel, are driven at higher speed than the normal speed. Testing that the driver of the bus, stopped the vehicle, on seeing the approaching motor cyclist, is not credible and improbable. Improbability is further strengthened by conduct of Investigating Officer, in closing the complaint even without examining the complainant. Before closing a complaint as mistake of fact, factual details have to be ascertained by recording the statements of the witnesses. In the instant case, the investigation officer has not even examined the complainant, but closed it, as one of mistake of fact. Cloud over the driver of the bus, as well as, the other Police Officials is not cleared and there is no convincing evidence to fix negligence on the motor cyclist. In motor accident cases, finding of negligence is not recorded by adhering to strict rules of evidence, it is on the principles of rather preponderance of probability. In the instant case, evidence adduced on the side of the appellants appears to be improbable. Finding of the Tribunal is not perverse, and the same does not require any interference, and hence it is confirmed.

10. The deceased, was a Special Sub-Inspector of Police, belonging to the same department. His income and loss of

contribution to the family, due to death are clearly proved by documentary evidence. In the cross examination, the respondents have also admitted the same. Therefore, the quantum of compensation awarded by the Tribunal to the claimants/legal representatives of the deceased, need not be interfered with and therefore, it is confirmed.

11. In the result, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

12. Record of proceeding shows that at the time of admission, this Court has granted interim stay on condition that the appellant deposits 50% of the award amount, to the credit of M.C.O.P.No.161 of 2013, on the file of the Motor Accident Claims Tribunal (District Judge), Krishnagiri, within a period of eight weeks, failing which, the stay granted shall stand vacated automatically.

13. The appellant has come out with a petition in C.M.P.No.8822 of 2017 in C.M.A.No.1104 of 2015 for extension of time. This Court, vide order, dated 6/3/2017, has granted eight weeks time to deposit the award amount, from the date of receipt of a copy of this order.

14. Today, when the matter was taken up for final hearing, Mrs.M.Jayasree, learned Government Advocate, submitted that sanction was accorded in Na.Ka.No.C4/8663/2012, dated 13/6/2017, to deposit the amount, into the account of M.C.O.P.No.161 of 2013. Accordingly, amount has been calculated and deposited in Treasury. Learned Government Advocate would further submit that the deposit receipt is still pending with the Treasury and would produce the same, in a week's time.

15. Per contra, learned counsel appearing for the respondents would submit that no amount has been deposited so far. Recording the statement of respective counsel, direction is issued to the appellants, to deposit the entire amount, with proportionate interest at the rate of 7.5% p.a., from the date of claim petition till realisation along with costs, within a period of four weeks from today, if not already deposited.

16. Share of the minor/fourth respondent, shall be deposited in any one of the Nationalised Banks proximate to the residence of the mother and guardian, in fixed deposit under the reinvestment scheme initially for a period of three years. Interest accruing on the share of the minor shall be paid to the 1st respondent/mother of the minor once in three months, till she attains majority. On such deposit being made, except the minor, the respondents 1 to 3 and 5/claimants are permitted to withdraw

the award amount, as apportioned by the Tribunal, by making necessary applications.

17.Post on 19/7/2017, for reporting compliance.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

mvs

To

1. The Motor accidents claims Tribunal
(District Judge) Krishnagiri.
2. The Section Officer,
V.R Section, High Court, Madras.
3. The Section Officer,
Judicial Posting, High Court, Madras.

+1cc to M/S.Sarvabhauman, Advocate Sr. 42471

C.M.A.No.1104 of 2015

SR(CO)
VR(10/07/2017)

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