

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 19.06.2017

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THE HONOURABLE DR. JUSTICE S.VIMALA

C.M.A. No.1519 of 2017

and

C.M.P.No.8118 of 2017

The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Chennai - 2. ... Appellant/1st Respondent

versus

1. Dhamodaran
2. Rajeswari
3. Karpagam
4. Minor Sinduja
(Minor rep.by next friend mother Karpagam
the 3rd Respondent herein)

... Respondents/Claimants

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 18.10.2006 made in M.A.C.T.O.P.No.9 of 2004 on the file of the Motor Accident Claims Tribunal-cum-Principal District Court, Pondicherry.

For appellant : Mr.N.Anand

J U D G M E N T

The appeal has been filed by the Transport Corporation, challenging the finding on negligence as well as finding on quantum. The parents of the deceased, Ravi, have filed the claim petition for compensation claiming a sum of Rs.10,00,000/-.

2. The deceased Ravi, aged 37, at the time of accident was employed as a driver at Ashok Nursing Home, Pondicherry, and he was earning a sum of Rs.3,300/- per month, as per the salary certificate and alleging that on account of death of the deceased, the parents have suffered both financial and moral supports, the claim petition has been filed by them.

3. The claims Tribunal, on a consideration of materials placed before it, came to the conclusion that the accident had occurred only on account of the rash and negligent driving on the part of the appellant's bus driver and the claimants are

entitled to a sum of Rs.3,36,000/- as compensation.

4. The manner in which the accident has occurred is very relevant with regard to the issue raised, regarding negligence. According to the case of the claimants, on the date of accident i.e., on 03.10.2003, when the deceased, Ravi, was driving Hyundai Tomanado car, bearing registration No.PY-01-T-2444, along with his employer's son and two daughters, the bus belonging to the Transport Corporation, came in a rash and negligent manner, from the opposite direction and dashed against the car, in which, the car driven by the deceased Ravi got damaged and as a result he sustained grievous head injuries and died, on the next day of the accident, despite best treatment.

5. It is the grievance of the learned counsel appearing for the appellant / Transport corporation that the evidence of RW-1, the employee, examined on the part of the Transport Corporation, has not been considered in a proper perspective.

6. This contention appears to be incorrect, in view of the discussion by the claims Tribunal, with regard to point No.1. The Tribunal has given a specific finding that even though the bus driver RW1 has given evidence to the effect that the car overtook the bus, (which is going in front of the car) and dashed against the bus, this evidence cannot be true as the bus and car were driven in the opposite direction. Considering the merits of the evidence of eye witness and the driver the Tribunal has accepted the evidence of the eye witness which is cogent and believable. Further, the very fact that the First Information Report has been registered against the appellant's bus driver would prima facie establish the fact that there was negligence on the part of the driver of the appellant transport corporation. Therefore, the finding on negligence by the Tribunal requires no interference by this Court.

7. So far as the quantum of compensation is concerned, the Tribunal has taken into consideration the following parameters :-

8. The Tribunal has relied upon the birth extract of the deceased (Ex.A-6) to determine the age of the deceased as 37. PW-3 is an employer of the deceased from Ashok Nursing Home, where he produced salary certificate, which is marked as Ex-A10, showing the salary of the deceased as Rs.3,300/- and based on the said document, the Tribunal has taken the income at 3,000/- per month.

9. The fact remains that the accident itself had happened, when the deceased has been in employment with his employer as Driver and actually while he was driving the vehicle. Moreover, the driving License has also been produced, which is marked as Ex-A7. Though the deceased was a Driver, still, the Tribunal has taken the income only at Rs.3,000/- per month.

10. When the deceased was aged 37, the future prospective increase in income at 50% ought to have been considered, but the Tribunal did not consider the same. Adopting the multiplier of 14 and deducting 1/3rd towards the personal expenses, the loss of income has been quantified at Rs.3,36,000/- (3,000-1/3rd x12 x14).

11. So far as the claimants are concerned, the wife has been added as second respondent and the Tribunal has awarded a sum of Rs.15,000/- towards loss of consortium to the second respondent (before the Tribunal); Rs.15,000/- towards loss of love and affection; Rs.2,500/- towards loss of estate; Rs.4,000/- towards funeral expenses, thus the total compensation awarded by the Tribunal was Rs.3,72,500/-.

12. The quantum, awarded by the Claims Tribunal, in the opinion of this Court, on any head cannot be said to be excessive and the appeal has no merits.

13. In view of the above, the Civil Miscellaneous Appeal is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

14. The Appellant / Transport Corporation is directed to deposit the entire award amount, along with interest and costs as awarded by the claims Tribunal, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the savings bank accounts of the major claimants (respondents 1,2 and 3 in this appeal) through RTGS within a period of two weeks thereafter and the share of the minor claimant shall be deposited in a fixed deposit in any one of the Nationalized bank till the minor attains majority and the interest accrued thereon shall be withdrawn by the guardian of the minor claimant (respondent in this appeal) once in three months directly from the bank.

s/d-

Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

kv/vsi2

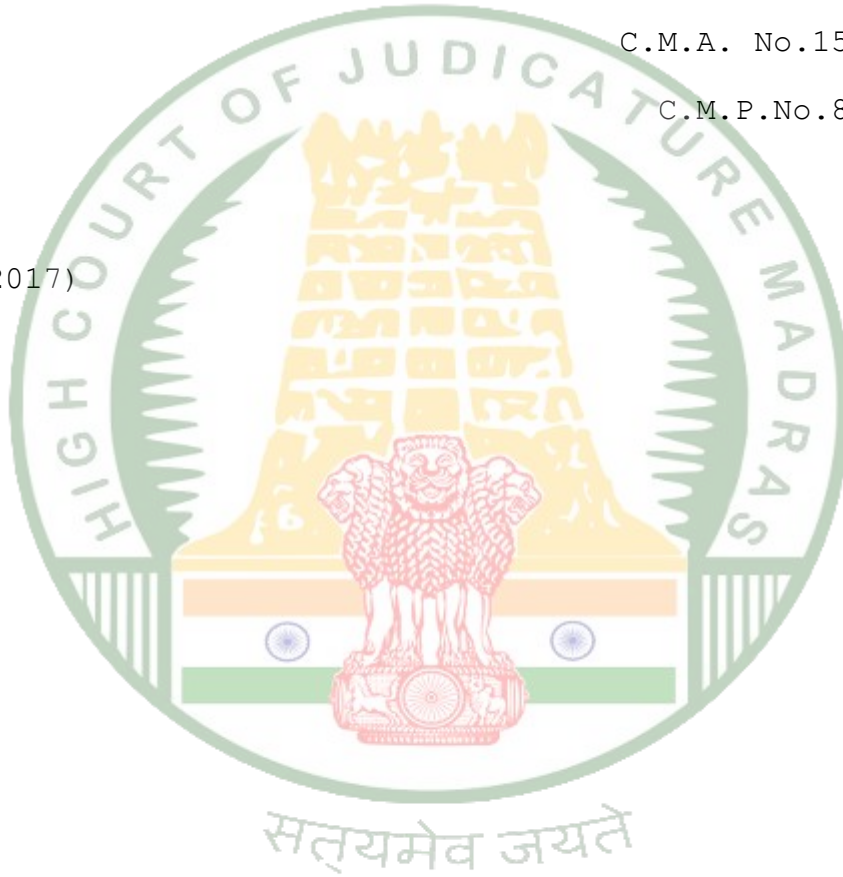
To

1.The Motor Accident Claims Tribunal-cum-Principal
District Court, Pondicherry.

+1 CC to Mr.N. Anand, Advocate sr 43048.

C.M.A. No.1519 of 2017
and
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KGK(CO)
SP(19/12/2017)



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