

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 2/6/2017

C O R A M

The Honourable Mr.JUSTICE S. MANIKUMAR
and

The Honourable Mr.JUSTICE M. GOVINDARAJ

Civil Miscellaneous Appeal No.1595 of 2017

The Managing Director
Metropolitan Transport Corporation Ltd
Anna Salai
Chennai 2.

... Appellant/Respondent

Vs

1. C.S.Kalpana Devi

2. K. Gayathri

3. J. Rajeswari

... Respondents/Petitioner

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree made in M.C.O.P.No.46 of 2011 dated 19/8/2013 on the file of the Motor Accident Claims Tribunal (Chief Court of Small Causes), Chennai.

For appellant ... Mr.S.Sivakumar

For respondents ... Mr.KV.Muthuvisakan

J U D G M E N T

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

Challenging the compensation awarded in M.C.O.P.No.46 of 2011, dated 19/8/2013, on the file of the Motor Accident Claims Tribunal (Chief Court of Small Causes), Chennai, Metropolitan Transport Corporation Limited, Chennai has preferred the instant appeal.

2. On 12/11/2010, J.Kumaravelu, was travelling, in a Corporation bus of the appellant, bearing Registration No.TN01N-4811. Near Agaram, Chennai from north to south, driver of the Corporation bus, drove the same, in a rash and negligent manner

at great speed. Due to the rash driving, the bus fell in a pit and the deceased was thrown out of the bus, and sustained multiple injuries. He was admitted in Indian Hospital, Arumbakkam and died, subsequently.

3. Legal representatives made a claim of Rs.50,00,000/-, under various heads, contending that the deceased was aged about 45 years, and as a Wireman - Grade I, in Government Institute of Rehabilitation of Medicines, K.K.Nagar, Chennai, earned Rs.30,000/- p.m.

4. In order to prove the case of the claimants, they have examined P.Ws.1 to 3 and marked Exs.P.1 to P.8. On the side of the respondents, two witnesses, R.Ws.1 and 2, driver and conductor of the bus, respectively, have been examined and no documents were marked.

5. After considering Ex.P.1 and evidence of the eye witness - P.W.3, and the evidence adduced by the appellant, the Tribunal has come to the conclusion that the driver of the bus was rash and negligent. The Tribunal has also relied on Ex.P.6 copy of the charge sheet to substantiate the finding. The Tribunal has rejected the version of R.Ws.1 and 2 that the deceased attempted to alight from the moving bus and invited the accident, for the reason that during the cross examination both have admitted they have not witnessed the incident. But the evidence of eye witness P.W.3 was clear and cogent and narrated the incident as to how the deceased was thrown out of the bus from the rear entrance. During cross-examination, P.W.3 has categorically deposed that negligence was on the driver of the appellant Corporation.

6. In so far as the quantum is concerned, based on the evidence of PW1 wife, PW2, Superintendant of Government Institute of Rehabilitation Medicines, K K Nagar, Chennai, Ex P4- Identity Card, P7-Salary Slip and P8-Service Particulars, the Tribunal has fixed the monthly income as Rs.29,711/-. Following the judgement of Hon'ble Supreme Court in Sarla Verma & Ors Vs. Delhi Transport Corporation and Another {2009 (2) TN MAC 1 (SC)}, has calculated the loss of earning capacity by adding 30% towards future prospects. The deceased was aged about 46 years, at the time of accident and therefore, applying multiplier 13 and after deducting 1/3 towards personal and living expenses, the contribution to the family was arrived as Rs.36,15,248/-. Rs.15,000/- has been awarded to the wife of the deceased for loss of consortium, Rs.25,000/- to the children towards loss of love and affection, Rs.10,000/- each, for loss of estate and funeral expenses and Rs.5,000/- towards transport expenses was awarded by the Tribunal. Altogether, the Tribunal has awarded Rs.36,80,248/- as compensation.

7. Mr.S.Sivakumar, learned counsel appearing for the appellant Corporation would submit that the finding of the Tribunal on the aspect of negligence is not correct. The deceased himself had contributed to the accident and therefore, the Tribunal must have fixed 50% towards contributory negligence on the part of the deceased.

8. From the evidence available before this Court and on appreciation of the documents, we could see that P.W.3 has clearly deposed that the deceased was thrown out from the rear entrance of the bus, when the bus was rashly driven over a pit by the driver. During cross-examination, he has clearly deposed as to the manner of accident. Transport Corporation could not disprove the evidence of P.W.3. So also, R.W.1 and R.W.2 driver and conductor of the bus, respectively, examined themselves as witnesses, could not prove their version, rather have admitted that they have not witnessed the victim being thrown out of the bus. The Tribunal has rightly observed that they have given false evidence and the same merits no consideration. A case was registered against the driver of the bus, bearing Registration No.TN01N-4811, in Crime No.500 of 2010, under Section 337 of the Indian Penal Code and 184 of the Motor Vehicles Act and a charge sheet has been filed before VI Metropolitan Magistrate Court, Chennai. On a careful perusal of Exs.P.1 and P.6, the Tribunal has come to the conclusion that the accident occurred due to the rash and negligent driving. Therefore, the finding of the Tribunal cannot be interfered with. Since the serious objection was raised only on the ground of negligence and not on quantum, we do not delve into the issue of quantum of compensation. Thus, the appeal merits no consideration and the same deserves to be dismissed.

9. Accordingly, this Civil Miscellaneous Appeal is dismissed. No costs.

10. Mr.S.Sivakumar, learned counsel for the appellant Corporation would submit that 50% of the compensation amount awarded by the Tribunal has already been deposited, to the credit of M.C.O.P.No.46 of 2011, on the file of the Motor Accident Claims Tribunal (Chief Court of Small Causes), Chennai and the same was withdrawn by the respondents/claimants.

11. Taking note of the submission made by the learned counsel appearing for the appellant Corporation, appellant Corporation is directed to deposit the balance amount, with proportionate interest and costs, within a period of twelve

weeks, in two equal instalments, from the date of receipt of a copy of this order.

Sd/-
Asst.Registrar (CS VIII)

/true copy/

Sub Asst. Registrar

To

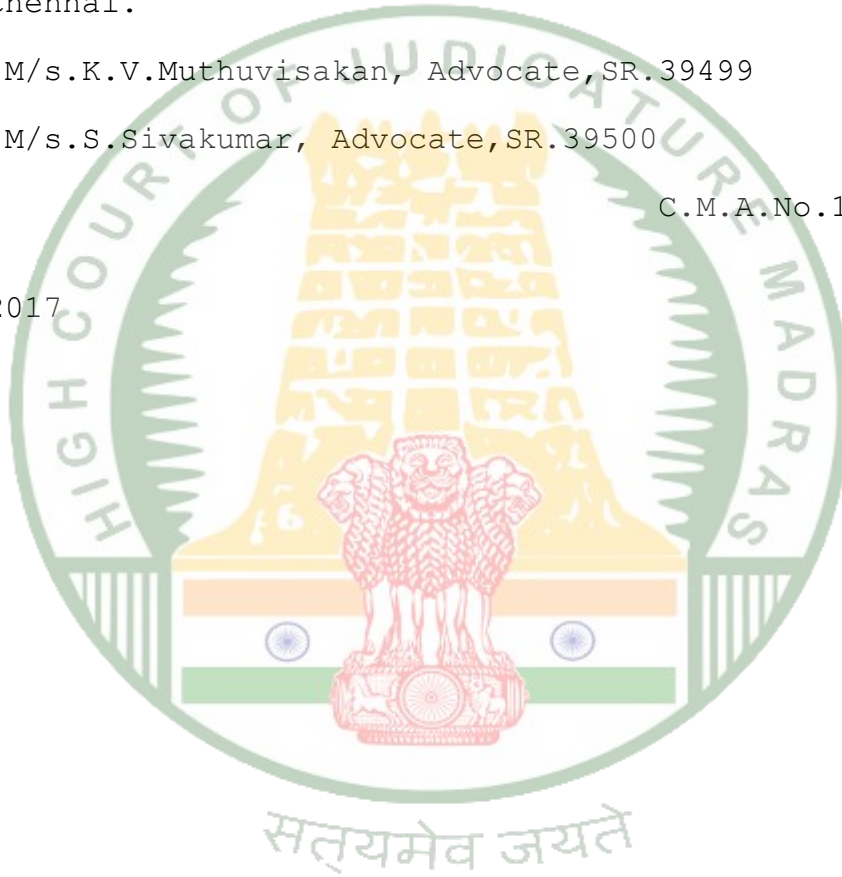
The Motor Accident Claims Tribunal (Chief Court of Small Causes), Chennai.

+ 1 cc to M/s.K.V.Muthuvisakan, Advocate, SR.39499

+ 1 cc to M/s.S.Sivakumar, Advocate, SR.39500

C.M.A.No.1595 of 2017

RSK(CO)
NR 27/07/2017



WEB COPY