

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.11.2017

CORAM:
THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A No.3167 of 2017
and
C.M.P. No.19497 of 2017

The Managing Director
Tamil Nadu State Transport Corporation
(Coimbatore Limited)
37, Mettupalayam Road
Coimbatore post, Coimbatore District. ... Appellant/
2nd Respondent

Vs.

1.A.Pushpa
2.Minor A.Vivek
3.Minor A.Vinith
4.Minor A.Vishal
Represented by their next friend
Mother A.Pushpa ... Respondents 1 to 4/
Petitioners

5.M.Venkatesan ... Respondent/1st Respondent

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree, dated 24.03.2016 made in M.C.O.P.No.736 of 2014, on the file of the Motor Accidents Claims Tribunal (Additional District Judge No.III) Dharapuram.

For Appellant : Mr.K.J.Shivakumar

For R1 to R4 : Mr.Ma.P.Thangavel
vide Court order dated 08.11.2017
in C.M.P.No.18525 of 2017

JUDGMENT

The Civil Miscellaneous Appeal is filed against the judgment and decree dated 24.03.2016 made in M.C.O.P.No.736 of 2014 on the file of the Motor Accidents Claims Tribunal (Additional District Judge No.III), Dharapuram.

2. The appellant is the second respondent, the respondents 1 to 4 are the claimants and fifth respondent is the first respondent in M.C.O.P.No.736 of 2014 on the file of the Motor Accidents Claims Tribunal (Additional District Judge No.III), Dharapuram. The respondents 1 to 4, who are the claimants have filed the above said MCOP, claiming a sum of Rs.25,00,000/- as compensation for the death of one Arumugam, who is the husband of the first respondent and the father of the respondents 2 to 4.

3. According to the respondents 1 to 4, on 19.04.2014, while the deceased Arumugam was standing on the left extreme of the Coimbatore to Chettipalayam main road near Kalainar nagar bus stop, the fifth respondent drove the bus bearing Registration No.TN 38 N 2742 in a rash and negligent manner. On seeing this, the deceased moved further and gone to the edge of the road. Due to the high speed, the fifth respondent lost the control and the bus came to the edge of the road and dashed against the deceased and ran over him. Due to the said impact, the deceased Arumugam died on the spot. The First Information Report has been registered against the driver of the bus belonging to the appellant. According to the respondents 1 to 4, the accident had occurred only due to the rash and negligent driving of the driver of the bus belonging to the appellant. At the time of accident, the deceased was 40 years old and was working as a tailor and earning a sum of Rs.15,000/- per month.

4. The appellant herein has filed counter statement in MCOP and denied all the averments made by the respondents 1 to 4. According to the appellant, on the date of accident, the driver of the bus drove the bus slowly and continued his trip to Gandhipuram. There is no such incident happened at that time. But in the next trip, when the bus reached Kalainar nagar at 10.45 p.m., the persons told that the bus hit against one person in the bus stop. But no accident was happened by the bus belonging to the appellant. Hence, the appellant is not liable to pay any compensation to the respondents 1 to 4.

5. Before the Tribunal, the respondents 1 to 4 examined first respondent as P.W.1 and one Manuel as P.W.2 and marked seven documents as Exs.P1 to P7. The appellant examined fourth respondent as R.W.1 and no document was marked.

6. The Tribunal, after considering the pleadings, oral and documentary evidence, came to the conclusion that the appellant was responsible for the said accident and held that the accident took place only due to the rash and negligent driving of the driver of the bus belonging to the appellant Corporation and awarded a sum of Rs.10,40,000/- as compensation to the

respondents 1 to 4/claimants.

7. Aggrieved against the award of the Tribunal dated 24.03.2016 made in M.C.O.P.No.736 of 2014, the appellant/Transport Corporation has filed the present Civil Miscellaneous Appeal.

8. The learned counsel for the appellant submitted that the Tribunal failed to consider that no valid documents were filed by the respondents 1 to 4 to prove the age and income of the deceased Arumugam. The amount of Rs.7,000/- fixed by the Tribunal as monthly income of the deceased is excessive. The driver of the bus belonging to the appellant is not responsible for the accident. Further, the amounts awarded by the Tribunal under other heads are also excessive.

9. The learned counsel for the respondents 1 to 4 submitted that the respondents 1 to 4 proved that the accident took place only due to rash and negligent driving by the driver of the bus belonging to the appellant Corporation. P.W.2 also deposed in his evidence that the accident took place only by the driver of the bus. Hence, the respondents 1 to 4 prayed for dismissal of the appeal.

10. I have heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondents 1 to 4 and perused all the materials available on record.

11. The learned counsel for the appellant contended that the driver of the bus was not responsible for the accident and hence, the appellant Corporation is not liable to pay the award amount to the claimants. But the appellant Corporation has not substantiated the said contention. R.W.1/driver of the bus in his evidence deposed that he was told by the persons standing in the bus stop that the bus hit against one person. P.W.2 had deposed that accident occurred only due to rash and negligent driving by driver of appellant. The Tribunal rightly held that the driver of the appellant Corporation only drove the bus in a rash and negligent manner and dashed against the deceased Arumugam and caused the accident. I do not find any error in the reasoning of the Tribunal.

12. As far as the quantum of compensation is concerned, in the absence of any proof with regard to the income of the deceased, the Tribunal has fixed Rs.7,000/- and taking into consideration the age of the deceased, the Tribunal adopted correct multiplier '15' and awarded a sum of Rs.9,45,000/- as loss of income. The Tribunal has also awarded a sum of Rs.40,000/- towards loss of consortium, Rs.40,000/- towards love and affection and Rs.15,000/- towards funeral expenses. The Tribunal totally awarded a sum of Rs.10,40,000/- as compensation

to the respondents 1 to 4, which is just and reasonable compensation and the same is hereby confirmed. In the above circumstances, this Court is not inclined to interfere with the impugned award passed by the Tribunal.

13. Accordingly, the award passed by the Tribunal is hereby confirmed and the Civil Miscellaneous Appeal is dismissed. The Appellant Transport Corporation is directed to deposit the award amount along with accrued interest and costs, less the amount deposited, if any, within a period of sixteen weeks from the date of receipt of a copy of this judgment. On such deposit, the first respondent is permitted to withdraw her share of the award amount, less the amount already withdrawn if any. The Tribunal is directed to deposit the share of the minor claimants/respondents 2 to 4 in any one of the nationalised bank in a fixed deposit, till they attain majority. The first respondent/mother of the minor claimants is permitted to withdraw the interest accrued on the said fixed deposit, once in three months. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-iv)

//True Copy//

Sub Assistant Registrar

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To

The Motor Accidents Claims Tribunal,
(Subordinate Judge) Dharapuram.

2. The Managing Director
Tamil Nadu State Transport Corporation
(Coimbatore Limited)
Coimbatore.

+1cc to Mr.J.SIVAKUMAR Advocate, S.R.No. 82239
+1cc to Mr.MA.P.THANGAVEL Advocate, S.R.No. 81796

C.M.A No.3167 of 2017
and
C.M.P. No.19497 of 2017

RSI (CO)
TR(17/01/2018)