

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.02.2017

CORAM :

THE HONOURABLE Mr. JUSTICE N.SESHASAYEE

CMA.No.1341 of 2007

and MP.No.1 of 2007

The Managing Director,
Tamil Nadu State Transport Corporation
(Salem) Ltd.,
No.12, Dr.Ramakrishna Road,
Salem - 7. ...Appellant

Vs.

1.G.Kirubakaran
2.Latchumi
3.G.Sundrajan

4.The Branch Manager,
The New India Assurance Company Ltd.,
Branch Office No.105, Railway Station Road,
Tirupattur Town and Taluk,
Vellore District. ... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act 1988 against the award made in MCOP. No.359 of 2005 dated 06.11.2006 on the file of the Motor Accident Claims Tribunal (I Additional District Judge) at Krishnagiri.

For Appellant :Mr.S.V.Vasantha Kumar

For Respondents :Mr.Mukund R.Pandian
for Mr.M.Sriram R1 &
R2 No Appearance
Mr.P.S.Kothadaraman[for R3]
No Appearance
Ms.G.Sukumari
for Mr.R.Sivakumar [R4]

JUDGMENT

The appellant before this Court is the State Transport Corporation whose bus was involved in a road accident that took place on 16.5.2004. The claimants along with their minor child were the passengers in the said bus. While so a Mahindra jeep bearing registration No.PY-01-A-3335 belonging to the second respondent and insured with the third respondent in the claim petition had a

collision with the bus owing to which the minor child of the claimants died. They approached the Tribunal with a claim for Rs.5,00,000/- whereas the Tribunal has passed an award for Rs.1,77,000/- payable with interest at 7.5% per annum. The Tribunal found that the drivers of both the vehicles were responsible in equal terms for the occurrence of the accident and has apportioned the liability equally between the appellant (State Transport Corporation) and the owner of the Mahindra van and its insurer.

2. Mrs.B.Vijayalakshmi, the counsel for the appellant is not present today and it is understood that she is no more in the panel of the appellant-Corporation. However Mr.S.V.Vasantha Kumar, panel counsel for the appellant was present in the Court today and he was given an opportunity to peruse the records and make his submissions. He accordingly made his submissions and was heard.

3. The only point the learned counsel argued on behalf of the appellant was that the accident had occasioned owing to the negligence of the second respondent (Mahindra jeep) and therefore the driver of the offending vehicle (Transport bus) was not at fault at all. In other words, the appellant challenges the factum of negligence and no more. Elaborating his arguments, the learned counsel submitted that according to the driver of the bus who was examined as R.W.1, the child who died in the accident was hanging his head outside the window and the driver of the jeep who came in the opposite direction in a negligent manner had lost his control and hit the rear side of the bus, and at that time the child whose head stretched outside the window got hurt grievously and died.

4. If the submissions made are carefully scanned, it first shifts the entire blame on the five year child or on the claimants/the parents of the child and on the driver of the Mahindra jeep. If the version of the appellant has to be believed, then it essentially depends on couple of facts such as the height of the bus, the height at which the window is located, whether there were any grills in the window of the bus, the height of the jeep and so many other factors. Only if these facts match well, the argument of the appellant can be appreciated. In the absence of any of these materials, it is impermissible for this Court to presume it so on the solitary statement of R.W.1.

5. I find no materials from which an inference such as the one that the appellant requires this Court to draw. Therefore, the only logical possibility is to confirm the findings of the Tribunal which this Court now does. I find no merit in this appeal and the same is dismissed without costs. Both the appellant as well as the third and fourth respondents are directed

to deposit their respective shares of the award amount if they have not already deposited within four weeks from the date of receipt of a copy of this order, whereupon the claimants would be free to withdraw the same forthwith, if they have not already withdrawn any. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

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To

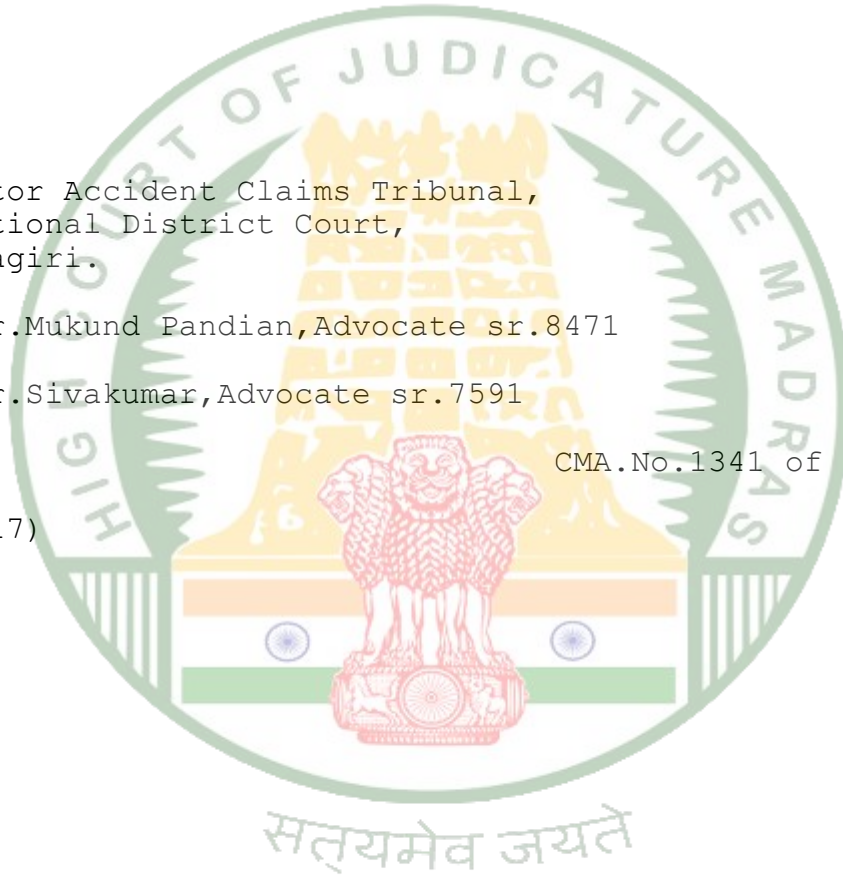
1.The Motor Accident Claims Tribunal,
I Additional District Court,
Krishnagiri.

+1cc to Mr.Mukund Pandian,Advocate sr.8471

+1cc to Mr.Sivakumar,Advocate sr.7591

CMA.No.1341 of 2007

mg(co)
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