

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.11.2017

Coram :

The Honourable Mr. Justice C.T. SELVAM
and
The Honourable Mr. Justice M.V. MURALIDARAN

C.M.A.No.3228 of 2013
and
M.P.No.1 of 2013

Managing Director, Vellore Region,
Tamil Nadu State Transport Corporation,
Villupuram (Division) Ltd.,
Villupuram, Villupuram District.

...Appellant /1st Respondent

Versus

1. Sumathi @ Venkatalakshmi (Deceased)
W/o. G. Venkatraj
2. V. Rajarajeswari
D/o. G. Venkatraj
3. G. Venkatraj
S/o. Gopal Chettiar
4. Mr. Santosh
5. ICICI Lombard General Insurance,
Swarnambigai Plaza, S.F.No.6/5.
Block No.7, Ward - C, Omalur Main Road,
Near New Bus Stand, Salem - 636 009.

(Respondents 2 and 3, Legal Representatives of the deceased first respondent are already on record. Recorded vide order of the Court dated 08.09.2017 made in C.M.A.No.3228 of 2013 and memo dated 11.08.2017 vide USSR.7663 of 2017.)

...Respondents/Respondents 2 & 3.

This Civil Miscellaneous Appeal is filed under Article 173 of the Motor Vehicles Act praying to set aside the order of the lower court dated 26.06.2012 in M.C.O.P.No.1421 of 2008, on the file of the Motor Accident Claims Tribunal (Additional District and Special Judge, and Special Judge for E.C. Act Cases), Salem as devoid of merits.

For Appellant : Mr. G. Palani
For Respondents - 1 to 3 : Mr. L. Mouli
Respondent - 5 : Ms. R. Sree Vidhya

J U D G M E N T

(Judgment of the Court was delivered by C.T. SELVAM, J.,)

This Civil Miscellaneous Appeal arises against the order of the learned Additional District and Special Judge, Motor Accident Claims Tribunal for E.C. Act Cases, Salem, dated 26.06.2012 in M.C.O.P.No.1421 of 2008.

2. Respondents 1, 2 and 3/claimants are mother, sister and father of the deceased. The fourth respondent is the owner of the lorry. On 09.02.2008, at about 04:30 a.m, while the deceased was traveling in the bus bearing Registration No.T.N.23.N.1852 belonging to the appellant transport corporation from Chennai to Salem, the same hit the lorry bearing Registration No.T.N.25.X.7490 which was stationary on the left side of the road, owing to which, the deceased sustained injuries and died, despite treatment.

3. Before the Tribunal, on the side of respondents 1, 2 and 3/claimants, one witness was examined and 37 exhibits were marked. On the side of appellant Transport Corporation, two witnesses were examined and no exhibits were marked. On appreciation of materials before it, Tribunal found that the accident had occurred owing to the rash and negligent driving of the bus belonging to the appellant transport corporation. Considering the age of the deceased and Ex.P.14, Income Particulars, Tribunal has fixed his annual income at Rs.2,11,608/- added 50% towards future prospectus and deducted 1/3rd towards personal expenses. Accordingly, the Tribunal awarded compensation as follows:

(i) Loss of dependency	- 38,08,944/-
[(Rs.2,11,608/- + 105,804/-) - 105,804 x18]	
(ii) Loss of Love and Affection	- 25,000/-
(iii) Medical Expenses	- 40,548/-
(iv) Funeral Expenses	- 5,000/-
Total	= 38,79,492/-

4. The said sum of Rs.38,79,492/- was directed to be paid with interest at 7.5% per annum from the date of petition till the date of realization. Against such finding, the appellant transport corporation has filed the present appeal.

5. Heard learned counsel for appellant and learned counsel for respondents.

6. Learned counsel for appellant submitted that the accident took place since the lorry, which was in front of the bus belonging to the Tamil Nadu State Transport Corporation suddenly came to a halt. In such circumstance, the driver of the bus could not avoid the accident. Learned counsel submits that R.W.2/driver of the lorry had admitted to not having placed any parking signal behind the lorry.

7. We find that a just and reasoned approach has been adopted in determining compensation. Given the clear position informed in Ex.P.1, First Information Report (FIR), that the lorry was stationary on the road, when the bus dashed against the same, we would hold that the accident had taken place because of rash and negligent driving of the bus. However, we would also take into consideration the admitted position of the lorry having been stationary and the evidence of R.W.2 that no parking signal has been placed there behind. Hence, we consider it appropriate to hold that the driver of the lorry contributed to the accident. Accordingly, while upholding the liability and the sum arrived in compensation, we would apportion the same between the appellant Transport Corporation and the fifth respondent Insurance Company in the ratio of 90:10.

8. Accordingly, this Civil Miscellaneous Petition is partly allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

9. (*) ***'It is represented that the appellant transport corporation has deposited only 75% of the amount awarded by the Tribunal. The balance 25% of the amount awarded by the Tribunal shall now be deposited within a period of four weeks from today. In keeping with the present order, fifth respondent Insurance Company is directed to pay the sum payable by them to the appellant transport corporation within a period of three weeks from today. It is open to respondents 2 and 3 to withdraw the entire award amount together with interest on due application.'***

-s/d-

Assistant Registrar(CCC)
(dated: 28/03/2018)

(*)Corrected as per order dated 27.08.2018
for being mentioned in CMA NO.3228/2013

Sd/-

Assistant Registrar (VI)
(dated 28.08.2018)

True Copy

Sub-Assistant Registrar

To

1. The Additional District &
Special Judge,
Motor Accident Claims Tribunal,
for E.C. Act Cases
Salem.

**to be substituted to the
order already despatched
on 17.04.2018**

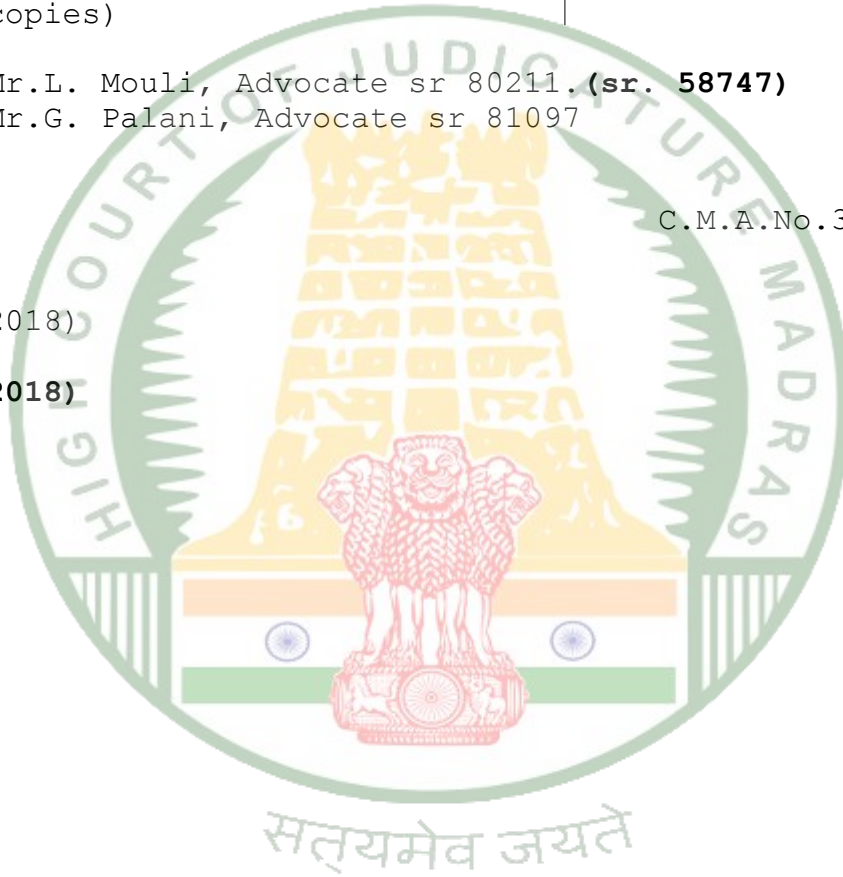
2. The Section officer
VR Section, High Court,
Madras (2 copies)

+1 CC to Mr.L. Mouli, Advocate sr 80211. (sr. 58747)
+1 CC to Mr.G. Palani, Advocate sr 81097

C.M.A.No.3228 of 2013

SP(04/04/2018)

TR(28/08/2018)



WEB COPY