

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.07.2017

CORAM

THE HONOURABLE Dr.JUSTICE S.VIMALA

C.M.A.No.2510 of 2017
and
C.M.P.No.13678 of 2017

Metropolitan Transport
Corporation Ltd.,
Division - I Chennai,
Rep.by its Managing Director. ...Appellant

(Cause title accepted vide
order of court dt.16.2.2001
made in CMP.No.2440/2001)

/Vs/

1. Rani
2. Raj @ Yaswanthraj
3. Ramabhai
4.Kokilah
5.Amudha
6.Manimegalai ...Respondents

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 24.12.1999 made in M.C.O.P.No.217 of 1995 on the file of the Motor Accident Claims Tribunal, (Subordinate Court), Poonamallee.

For Appellant : Mr.R. Sivakumar

JUDGMENT

Challenging the negligence on the part of the Transport Corporation, this appeal itself has been filed in the year 2000 i.e. on 17.07.2000 in respect of the accident, which had taken place on 02.12.1994. The claim petition has been filed in the year 1995 in M.C.O.P.No.217 of 1995 and the tribunal has passed the award on 24.12.1999.

2.The factual background reads as under;

The deceased, one Jayapaul, met with fatal accident on 02.12.1994 leaving behind his legal representatives viz. two unmarried daughters, one son, parents and wife.

3. It is the case of the claimants that the deceased is the only breadwinner of the family and on account of his death, they have suffered loss of guidance, loss of love and affection and loss of earnings. The claimants made a claim for a sum of Rs.1,00,000/- and the tribunal has chosen to pass an award for a sum of Rs.90,000/-.

3.1. At the time of accident, the deceased had been aged 58 years and even according to the claimants, the deceased had been doing business and he was earning a sum of Rs.1,500/- per month.

4. Relying upon the age stated in the postmortem Certificate, multiplier 6 has been adopted. The monthly income has been taken at Rs.1500/-, deducting 1/3 towards personal expenses, loss of dependency has been taken at Rs.1000/- per month and dependency has been taken at 12,000/- per year and loss of dependency has been calculated at $\text{Rs.12,000/-} \times 6 = 72,000/-$. Loss of love and affection, cremation expenses, loss of consortium, all together, have been quantified at Rs.18,000/- and total compensation of Rs.90,000/- has been awarded.

5. So far as the mode of accident is concerned, the case of the claimants is that near Ramavaram at Poonamallee road, when the deceased was crossing the road, the bus belonging to the transport corporation came in a rash and negligent manner and hit against him, ultimately, causing his death. But the case of the transport corporation is that the transport corporation bus was stopped at Ramavaram bus stand and after alighting the passengers, when the bus was proceeding at some distance, the deceased had crossed the road from right to left and at that time, he was hit by a lorry and he was thrown towards the appellant bus and thus, he suffered greivous injuries and died in the accident and therefore, the lorry driver alone was responsible for the accident and not the driver of the transport corporation bus.

6. With regard to the mode of accident before the tribunal, the eye witness one Pushpa has been examined as PW2 and Exs.A1 to A3 have been marked. Apart from that, the daughter of the deceased one Amutha has been examined as PW1 to speak about the accident. On behalf of the Transport Corporation, only the driver of the bus has been examined as RW1. The tribunal has relied upon the evidence of the eye witness PW2, who has spoken about the mode of accident that when the aged person was trying to cross the road, at that point of time, the driver of the corporation bus, after hitting the deceased, ran away leaving the bus and thus, the driver of the corporation bus is responsible for the accident. The driver RW1 has taken a stand that it is only the lorry driver, who was responsible for the accident. Under such circumstances, the Tribunal, on a perusal of the oral and

documentary evidence, had pointed out that if there is no fault on the part of the driver of the corporation, why the public came to beat the driver of the bus and there is no explanation on the part of the witness examined on behalf of the corporation as to why there was an attempt on the part of the public to beat him and therefore, relying upon the substantive evidence of P.W.2, the tribunal has given a finding that the fault was only on the part of the driver of the first respondent corporation.

7. Even assuming that the driver of the lorry was responsible for the accident nothing prevented the Transport Corporation from impleading the owner and insurer of the lorry as respondents in the main application. But, steps have not been taken in this matter from 1995. At this distant point of time, there is no use of remanding the matter for further enquiry. The evidence already adduced is more than sufficient to come to the conclusion that it is only the driver of the respondent corporation, who is responsible for the accident and the quantum awarded by the Claims Tribunal is reasonable and there is no ground to interfere with the award passed by the claims tribunal. The appeal has no merits and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

8. The Appellant/Transport corporation is directed to deposit the entire award amount as determined by the tribunal along with interest at 12% per annum from the date of petition till the date of deposit, 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 amount directly to the bank account of the respondents 1 to 6 through RTGS, as per the proportion fixed by the tribunal, within a period of two weeks thereafter.

Sd/-
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Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

sms/kv
To

1. The Motor Accident Claims Tribunal,
(Subordinate Court), Poonamallee.
2. The Section Officer, VR Section,
High Court, Madras.

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