

IN THE HIGH COURT OF JUDICATUE AT MADRAS

DATED 31.01.2017

CORAM

THE HONOURABLE DR. JUSTICE S.VIMALA

C.M.A. No.761 of 2017

&

C.M.P.No. 4109 of 2017

Managing Director,
Tamil Nadu State Transport Corporation
(Coimbatore Division I) Limited.,
37, Mettupalayam Road,
Coimbatore-641 043.
Formerly known as
Cheran Transport Corporation,
Coimbatore.

.. Appellant

Versus

1. C. Subramani
2. S. Pappathi
3. S. Rani (Minor)
4. K. Thangamuthu
(R4 given up)

.. Respondents

Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 27.02.2002 made in M.C.O.P.No.969/1997 on the file of Motor Accident Claims Tribunal, Dharmapuri.

For appellant	:	Mr. S.Swaminathan
For Respondents	:	No appearance

J U D G M E N T

Challenging the finding of negligence as well as quantum of compensation awarded by the Claims Tribunal in M.C.O.P.No.969 of 1997, dated 27.02.2002, the

Transport Corporation has preferred this Civil Miscellaneous Appeal.

2. The deceased one Veerakumar aged 16 years, who was working as a Manager in a Private Powerloom factory, earning a sum of Rs. 2,000/- per month, died in an **accident that occurred on 23.07.1997**. Hence, his parents and sister filed a claim petition, in M.C.O.P.No.969 of 1997, seeking compensation of Rs.5,00,000/-. The Claims Tribunal, on consideration of oral and documentary evidence has awarded a sum of Rs. 2,53,000/- (Rupees Two Lakhs Fifty Three Thousand) with interest @ 9% from the date of petition till the date of deposit, as compensation. The break up details of the same is as follows:

Loss of dependency (2000x12x15-1/3)	-	Rs. 2,40,000/-
Loss of Love and Affection	-	Rs. 10,000/-
Funeral expenses	-	Rs. 3,000/-
		Rs.2,53,000/

3. The learned counsel for the appellant would submit that the compensation awarded by the Tribunal is very high and the same needs to be reduced. He would further submit that the tribunal has wrongly come to the conclusion that the accident occurred due to rash and negligent driving of the driver of the appellant Corporation.

4. A perusal of the award passed by the Claims Tribunal would go to show that the Claims Tribunal by fixing monthly income of the deceased at Rs.2,000/-

and after deducting 1/3rd towards personal expenses and by adopting the multiplier 15 (by considering the age of the claimants) has quantified the compensation at Rs.2,40,000/- towards Loss of dependency.

5. The learned counsel for the appellant would submit that deduction of 1/3rd is unwarranted and deduction must be 50%. The fact that this contention would be correct under normal family circumstances. But, here is a case where at the age of 16, the minor boy had been driven to the extent of seeking employment while he is expected to be studying. The poor family circumstances is reflected in the mind of taking a job at the age of 16. In such families, it is not possible to spend 50% towards personal expenses. Therefore, deduction of 1/3rd is justified.

6. A sum of Rs.10,000/- is awarded towards Love and Affection and a sum of Rs.3,000/- awarded towards funeral expenses cannot be said to be excessive and therefore the same does not warrant interference.

7. As far as negligence is concerned, the Claims Tribunal has relied upon the evidence of P.W.2-the eye witness, apart from the sketch. The vehicle was going from East to West. If the driver had followed up road rules, i.e. keeping the left, the vehicle should be on the southern side. But the accident had taken place on the northern side of the road. This circumstance would clearly show that the negligence is on the part of the driver of the offending vehicle.

8. The next contention is that the driver had been acquitted (Ex.P7-Judgment) by the criminal Court and therefore the driver must be exonerated from

the liability. This contention cannot be accepted on two reasons viz., (1) The degree of proof required in a Criminal Court is proved beyond reasonable doubt but in a civil Court, it is preponderance of probability and (2) One of the reason for acquittal is the delay in sending the F.I.R. to the Court as well as lack of clear evidence with regard to the accident. In any event, it is settled law that the Civil Court can come to an independent conclusion de hors the decision taken by the Criminal Court. This dictum is supported by the decision of the Supreme Court in ***Shanti Kumar Panda vs Shakutala Devi*** whereunder it has been held that a decision by a Criminal Court does not bind the Civil Court while a decision by the Civil Court binds the Criminal Court. Therefore, the Judgment of acquittal by a criminal Court would not exonerate the driver from the liability when there is clinching evidence, available before the tribunal.

9. In view of the aforesaid reasoning, this Civil Miscellaneous Appeal is dismissed confirming the Judgment and Decree of the Claims Tribunal in M.C.O.P.No.969 of 1997 dated 27.02.2002. The Transport Corporation is directed to deposit the entire compensation awarded by the Tribunal, less the amount already deposited, if any along with interest @ 9% per annum from the date of petition till the date of deposit, within a period of six weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Claimants are permitted to withdraw the same. Consequently, connected Miscellaneous Petition is closed.

31.01.2017

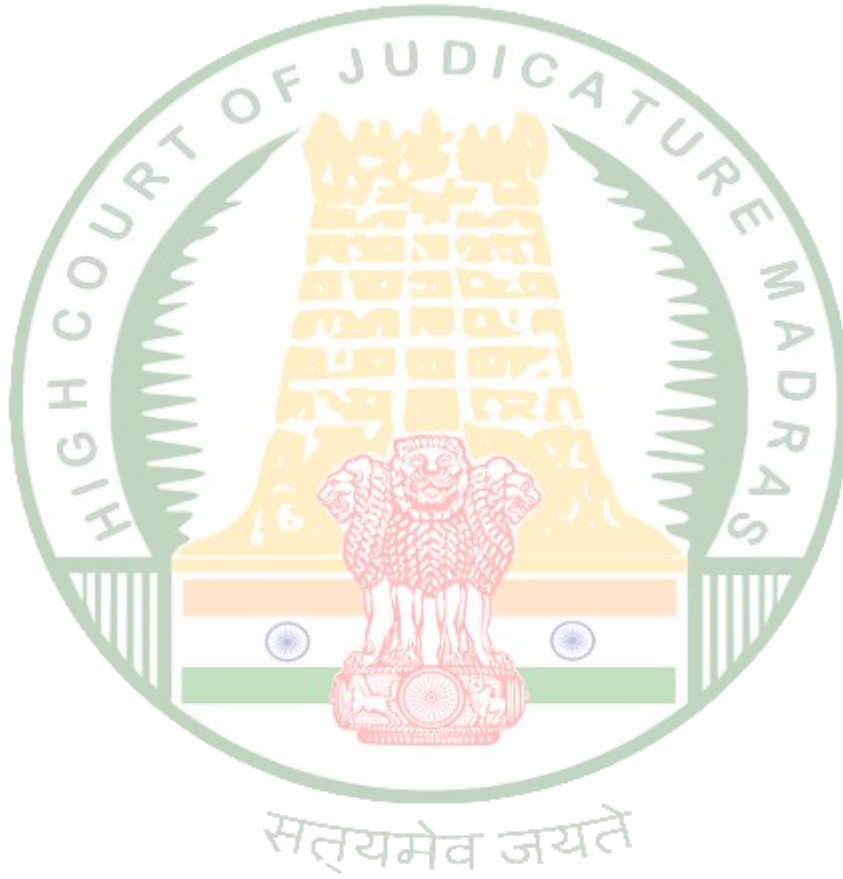
Index : Yes/No

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arr/srk

To

1. The Motor Accident Claims Tribunal, Learned Subordinate Judge,
Dharapuram.
2. The Section Officer, VR Section,
High Court, Madras.



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DR.S.VIMALA,J.

Arr/srk



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