



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.12.2017

CORAM :

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THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

CMA(MD)No.1011 of 2016
and
CMA(MD)No.1067 of 2016

Tamil Nadu State Transport Corporation,
(Tirunelveli) Limited,
Through its Managing Director,
Tirunelveli Region,
Tirunelveli.

... Appellant in CMA(MD)No.1011 of 2016
&... Respondent in CMA(MD)No.1067 of 2016

Vs.

1.Kichappan

2.Rajalakshmi ... Respondents in CMA(MD)No.1011 of 2016
& Appellants in CMA(MD)No.1067 of 2016

Prayer: Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 01.02.2016 made in MCOP.No.1 of 2014 on the file of the Motor Accident Claims Tribunal, Sub Judge, Kovilpatti.

For Appellant in
CMA(MD)No.1011/2016 &
For Respondents in
CMA(MD)No.1067 of 2016 : Mr.P.Prabhakaran

For Respondents in
CMA(MD)No.1011/2016 &
For Appellants in
CMA(MD)No.1067/2016 : Mr.B.Rajesh Saravanan

JUDGMENT

Arun Prakash, the deceased in this case was travelling in his two wheeler on 03.05.2013 at about 06.45 P.M, near Uppathoor junction in Sathur - Kovilpatti National Highway. The bus belonging to the Tamil Nadu State Transport Corporation, Nagercoil coming from North to South dashed against the two wheeler. In the resulting accident, the said Arun Prakash died. Crime No.252 of 2013 was registered on the file of the Sathur Taluk Police Station against the bus driver. The parents of the deceased filed MCOP.No.1 of 2014 on the file of Motor Accident Claims Tribunal, Sub Court,

Kovilpatti. The father of the deceased examined himself as P.W.1. As many as 14 documents were marked. The bus driver examined himself as R.W1. The Tribunal awarded a sum of Rs.22.00 lakhs with interest. Contending that the Tribunal erred both on the grounds of negligence as well as quantum, CMA(MD)No.1011 of 2016 has been filed by the transport corporation. Contending that the compensation awarded by the Tribunal is inadequate, CMA(MD)No.1067 of 2016 has been filed by the claimants seeking enhancement of the compensation.

2.Ex.P2, Rough sketch was marked by the claimants. A mere look at the said rough sketch would show that the deceased was travelling West to East and crossing Uppathoor junction. The bus was coming from North to South in the high way. Since the accident taken place at the junction point, the primary negligence will have to be necessarily fastened only on the bus driver. Since it is a national high way, any person crossing any junction point and also the high way must pay greater attention. It is obvious that the bus was travelling on the correct side only. One can come to the conclusion that the rider of the two wheeler was probably confident that he could make the crossing safely. It is possible that the bus driver was not in a position to slowdown the vehicle, when he noticed the deceased.

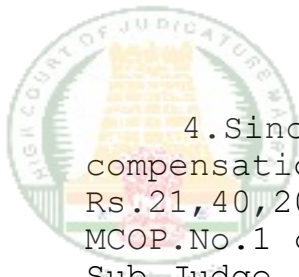
3.In these circumstances, I will have to necessarily apportion the negligence at 90% on the bus driver and 10% on the deceased. The deceased Arun Prakash had passed out from Anna University. Materials have been placed before this Court to show that he was pursuing M.A. Degree. He was working as a Lecturer in a private college. Ex.P9 was filed to show that he was earning little above Rs.15,000/-. The Tribunal did not believe the same and chose to fix the salary at Rs.12,000/-. I am of the view that the person who passed out of the Anna University and was pursuing further studies in Design Engineering, would have certainly earned Rs.15,000/-. In fact, his prospects were probably much higher. Therefore, I fix the monthly income earned by the deceased at Rs.15,000/-. After adding 40% towards future prospects, the monthly income will be as Rs.21,000/-. He was aged 25 years. He was a bachelor. The deduction from the monthly income should be 50%. The compensation payable to the claimants will have to be necessarily enhanced.

Pecuniary loss for the family
(10,500x12x18) : Rs.22,68,000/-

Loss of love and affection : Rs.1,00,000/-
and towards funeral expenses

Transportation charges : Rs.10,000/-

Total : Rs.23,78,000/-



4. Since 10% negligence has been fastened on the deceased, the compensation payable to the claimants would be Rs.21,40,200/-. The award dated 01.02.2016 made in MCOP.No.1 of 2014 on the file of the Motor Accident Claims Tribunal, Sub Judge, Kovilpatti is modified.

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5. The Tamil Nadu State Transport Corporation, (Tirunelveli) Limited is directed to deposit the sum of Rs.21,40,200/- with interest at the rate of 7.5% from the date of petition, till the date of realization and costs, within a period of eight weeks from the date of receipt of a copy of this judgment, less the amount already deposited, if any. On such deposit, the claimants are entitled to withdraw the same as apportioned by the Tribunal, less the amount already withdrawn by them, if any.

6. The appeal filed by the transport corporation is partly allowed. The appeal filed by the claimants is dismissed. No costs.

Sd/-

Assistant Registrar (CS-III)

/True copy/

Sub Assistant Registrar

To

The Sub Judge, Motor Accident Claims Tribunal, Kovilpatti.

Copy to:

The Record Keeper, V.R. Section, **(2 COPIES)**

Madurai Bench of Madras High Court, Madurai.

+1CC TO M/S.B.RAJESH SARAVANAN, ADVOCATE, SR NO.92455

+2CC TO M/S.P.PRABHAKARAN, ADVOCATE, SR NOS.92365, 92366

CMA (MD) No.1011 of 2016
and

CMA (MD) No.1067 of 2016
12.12.2017

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