



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.12.2017

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CMA(MD)No.178 of 2014

1.Loorthu Mary

2.Minor Agenes Niwas

3.Palaniammal

4.Kayamboo

(Minor, 2nd respondent rep.
through his mother, guardian
and next friend, Loorthu Mary,
1st petitioner herein)

... Appellants

Vs.

The Managing Director,
Tamil Nadu State Transport
Corporation Limited,
Nagercoil, Kanyakumari District.

... Respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 15.10.2012 made in MCOP.No.252 of 2012 on the file of the Motor Accident Claims Tribunal, 4th Additional District Court, Tirunelveli.

For Appellants
For Respondent

: Mr.T.Selvakumaran
: Mr.P.Prabhakaran

JUDGMENT

The claimants have filed this appeal questioning the dismissal of their claim petition.

2.One Sivanathan was travelling in a two wheeler on 26.11.2011 at about 06.30 P.M. In Oluganaseri - Vadaseri road, the accident in question took place. He died on the spot. Crime No.112 of 2011 was registered against the bus driver employed by the respondent corporation. The Tribunal however dismissed the claim petition on the ground that the claimants have not established that the bus belonging to the respondent corporation had caused the accident. Aggrieved by the dismissal of their claim petition, this appeal has been filed.



3. The learned counsel appearing for the appellants pointed out that the accident took place on 26.11.2011. The F.I.R. was registered only against the bus driver employed by the respondent. It is also admitted by the bus driver, who was examined as R.W.1 that the final report has filed against him and that it is still pending. The postmortem report was marked as Ex.P.2. A mere look at the antemortem injuries noted on the body of the deceased would show that there was fracture of the right collar bone and fracture of the second, third and fourth ribs on both right and left sides and other injuries also. On the side of the claimants, PW.2, was examined. He categorically stated that he saw the bus hit the deceased and that he summoned the ambulance along with his friends namely, Peter and Ponnaiya.

4. According to the claimants, the accident spot was near Kumaran Nursing Home. The said witness had deposed that the accident took place on account of the rash and negligent driving of the bus driver. What probabilizes the case of the claimants is the testimony of the RW.1. R.W.1 stated in his deposition that on 26.11.2011, he was driver of the bus belonging to the respondent corporation at about 06.30 P.M. When he was driving the bus near the Kumaran Nursing Home, the deceased attempted to over take the bus on the left side. He would further state that the said rider of the two wheeler hit the electric pole and sustained injuries. He testified that there was no collision between the two vehicles and that on account of the traffic violation committed by the deceased, the accident in question took place. P.W.2, also stated that in the said road, there used to be heavy traffic.

5. From a reading of the entire material on record, including the deposition of the eye witness as well as the bus driver and also the postmortem report, this Court can come to the conclusion that the accident had taken place only on account of the grasing of the body of the deceased when he was riding the two wheeler.

6. The driver was obviously fully aware of what was going on. The bus driver would state that the deceased was attempting to over take the bus on the left side. Having noticed him, the bus driver could and should have exercised greater care. I reject the assertion of the bus driver that the deceased died on account of the hitting the electric poll. Obviously, the bus had grased the two wheeler leading to the accident in question. I therefore apportion the negligence between the bus driver and the two wheeler rider.

7. Coming to quantum, it is seen that the rider of the two wheeler was aged about 29 years. Therefore, the multiplier must be taken as 17. Since the accident taken place in the year 2011, the monthly income can be fixed at Rs.6,000/-. Adding 40% towards future prospects, the monthly income would come to Rs.8,400/-. Considering the number of dependents, the deduction of one fourth will have to be made. The monthly income for the family would be RS.6,300/-.

<https://hcservices.ecourts.gov.in/hcservices/>

The compensation payable to the claimants will have to be reworked as under :



Pecuniary loss for the family : Rs.12,85,200/-
6300X12x17

For loss of consortium and loss : Rs.70,000/-
of estate and funeral expenses

For loss of love and affection : Rs.45,000/-

Total : Rs.14,00,200/-

8.Since 50% negligence is fastened on the deceased, a sum of Rs.7,00,100/- is quantified as compensation payable to the claimants. It can be rounded off to Rs.7,00,000/-. The award 15.10.2012 made in MCOP.No.252 of 2012 on the file of the Motor Accident Claims Tribunal, 4th Additional District Court, Tirunelveli is set aside.

9.The respondent corporation is directed to deposit the entire compensation amount with interest at the rate of 7.5% per annum, 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 order. On such deposit, the claimants are entitled to withdraw the same by filing proper application before the Tribunal. The wife of the deceased is entitled to a sum of Rs.2,50,000/- and the minor child is entitled to a sum of Rs.2,50,000/-. A sum of Rs.1,00,000/- each is given to the parents. The share of the minor claimant shall be deposited in any one of the nationalized bank and the mother of the minor child is entitled to withdraw the interest once in three months directly from the bank, till the minor attains majority.

10.This Civil Miscellaneous Appeal is partly allowed. No costs.

Sd/-

Assistant Registrar(CSIII)

/True Copy/

Sub-Assistant Registrar

To

1.The Motor Accident Claims Tribunal,
4th Additional District Court, Tirunelveli.

2.The Record Keeper, V.R.Section,(2 copies)

Madurai Bench of Madras High Court, Madurai.

+one cc to Mr.T.Selvakumaran, Advocate, SR.No.93458

+One cc to Mr.P.Prabhakaran, Advocate, SR.No.92785

skm

RL/6C/3P/KK/SAR1/26/2/2018

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