



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.11.2017

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A. (MD) No.1354 of 2015

and

M.P. (MD) .No.2 of 2015

Tamil Nadu Metropolitan
Transport Corporation Limited,
Pallavan House,
Chennai.

... Appellant/2nd Respondent

Vs.

1.Veeralakshmi
2.Sorna Raja
3.Suganya
4.Sadasivam

... Respondents 1 to 3/Petitioners
... 4th Respondent/1st Respondent

Prayer: Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgment and decree dated 28.02.2014 made in M.C.O.P.No.43 of 2010, on the file of the Motor Accident Claims Tribunal, Sub Court, Devakottai.

For Appellant : Mr.P.Prabhakaran
For Respondents : Mr.S.Vijayakumar for R1 to R3

JUDGMENT

Heard the learned counsel on either side.

2.The appellant Corporation has filed this appeal challenging the impugned award on the ground of liability. One Lakshmanan was employed as a conductor in the Tamil Nadu State Transport Corporation, Devakottai. He was travelling in the bus belonging to the appellant Transport Corporation on 23.08.2006. He fell down, when the bus in which he was travelling is said to taken a sudden right turn. He was admitted in the hospital and he died the next day. His wife and children filed M.C.O.P.No.43 of 2010, dated 28.02.2015, on the file of the Motor Accident Claims Tribunal, Sub Court, Devakottai.

3.The appellant Transport Corporation filed their counter contending that the deceased invited the accident himself by



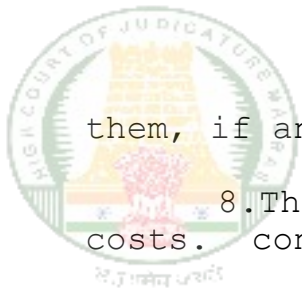
travelling in the foot board. He was also carrying luggage. He lost his balance and fell down on the road and sustained fatal injuries. The deceased alone was responsible for the accident. In support of this plea, the appellant examined Arul, conductor of the concerned bus. But the Tribunal chose to fasten the entire liability on the appellant Corporation and awarded a sum of Rs.15,93,868/- with interest.

4.Assailing the said award, the learned counsel for the appellant Corporation took me through the deposition of DW1. He also drew my attention to the contents of FIR EX.P1. The said FIR was marked by the claimants. It is mentioned in the said FIR that the deceased was travelling in the foot board and invited the accident himself. Therefore, fixing of the entire negligence on the bus driver by the Tribunal cannot be correct. At the same time, the fact remains that the conductor Arul was duty bound to ensure that none travelled on the foot board. This duty was not discharged by him. He had allowed the deceased to travel on the foot board. Therefore, negligence will have to be necessarily fixed on the conductor.

5.It is also the case of the learned counsel appearing for the claimants that the bus was negotiating to the signal and in order to go quickly past the signal, the bus had swayed in a very rash and negligent manner. In the process, the victim had lost his balance. This appears to be fairly plausible. He also contended that the entire responsibility for the accident is on the part of the driver of the appellant Corporation only. He would further point out that the conductor was standing in the middle of the bus. In these circumstances, negligence must be apportioned primarily on the bus driver and the conductor. As already pointed out, the deceased cannot escape his part of the blame. I therefore fix 10% of the negligence on the deceased. He had also contributed to the occurrence of the accident. The Tribunal had correctly quantified the compensation payable to the claimants. This Court therefore has to reduce the same, as regards the entitlement of the claimants in view of the fixing of 10% negligence on the deceased also.

6. The award dated 28.02.2014, made in M.C.O.P.No.43 of 2010, on the file of the Motor Accident Claims Tribunal, Sub Court, Devakottai, is modified accordingly. The claimants will be entitled to 90% of the award amount fixed by the Tribunal. The claimants will be entitled to a sum of Rs.13,44,482/-. In all respects, the award of the Tribunal is confirmed.

7.The appellant is directed to deposit the entire compensation amount of Rs.13,44,482/- with interest at the rate of 7.5% per annum with costs, from the date of petition till the date of realization, within a period of eight weeks from the date of receipt of a copy of this order, 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, by filing proper application before the Tribunal.

8. This Civil Miscellaneous Appeal is partly allowed. No costs. consequently, connected miscellaneous petition is closed.

WEB COPY

Sd/-

Assistant Registrar (W)

/True Copy/

Sub Assistant Registrar

To

The Subordinate Judge,
Motor Accident Claims Tribunal
Devakottai.

+1cc to Mr.P.PRABHAKARAN Advocate in SR. No. 87402

+1cc to Mr.S.VIJAYAKUMAR Advocate in SR. No. 87549

TSG

JS/SV.MMS/SAR.4/29.12.2017/3P-4C

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