



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.11.2017

CORAM :

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A. (MD) No.200 of 2015

Assistant Commissioner of
Commercial Tax,
(Enforcement), Kumbakonam.

... Appellant/2nd Respondent**Vs.**

1.M.A.Haja Mydeen
2.Najupudeen
3.A.Farooq @ Mufaraq Ali
4.P.Srajunisha
5.P.Dharpanisha
6.S.Shakila Banu

... Respondents 1 to 6/
Petitioners 1 to 6

7.Managing Director,
Tamil Nadu State Transport Corporation,
Kumbakonam.

... 7th Respondent/1st Respondent

8.Noorule Hutha

... 8th Respondent/3rd Respondent

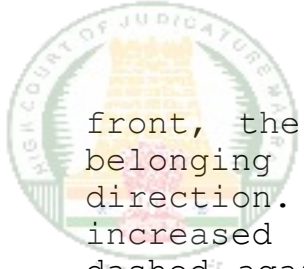
Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree order dated 19.06.2012 made in MCOP.No.126 of 2009 on the file of the Motor Accidents Claims Tribunal, cum Chief Judicial Magistrate, Thanjavur at Kumbakonam.

For Appellant : Mr.Raja Karthikeyan
Additional Government Pleader.
For Respondents : Mr.S.Deena dhayalan for R4 to R6
Mr.P.Prabhakaran for R7
R8 - Exparte (vide in EB)
R1 to R3 - No Appearance

JUDGMENT

The Commercial Tax Department has filed this appeal questioning the impugned award principally on the ground of negligence.

2.The deceased Mohammed Ayuf was a senior citizen. He was aged 80 years. He was travelling as a pillion rider in the two wheeler that was ridden by his son Najupudeen. A Jeep belonging to the appellatant herein was going in front. Since the Jeep was going in



front, the two wheeler attempted to over take the Jeep. The bus belonging to the Transport corporation was coming in opposite direction. For reasons best known, the Jeep driver Sekar had increased the speed of the Jeep. In the process, the said Jeep dashed against the two wheeler. The two wheeler fell down. The bus which was coming from the opposite direction ran over the two wheeler. In the ensuing accident, the deceased sustained injuries and died. His legal heirs filed MCOP.No.126 of 2009 before the Motor Accidents Claims Tribunal, cum Chief Judicial Magistrate, Thanjavur at Kumbakonam. The Tribunal awarded a sum of Rs.1,57,000/- with interest. This award is questioned by the Department in this appeal.

3. Heard the learned Additional Government Pleader appearing for the appellant.

4. The learned Additional Government Pleader would contend that as per the report of the Motor Vehicle Inspector, the jeep did not suffer any damage. If the jeep had suffered any damage and had caused the accident, it would have certainly suffered damage and the same also would be reflected in the report. Even though F.I.R was registered against both the drivers, the jeep driver employed by the appellant department was ultimately acquitted by the Criminal Court.

5. I am of the view that this Court has to come to a finding regarding negligence independently on the findings of the Criminal Court. This is because, standard of proof applicable in the criminal case is higher. Judgment of the Criminal Court can be taken into account in this case. The rider of the two wheeler was also one of the claimants. He was also examined before the Tribunal. He deposed that it was the jeep belonging to the appellant department which had caused the accident in question. The Tribunal chose to accept the said version and fastened the liability on the appellant. This finding of the Tribunal is based on relevant material and credible evidence. I therefore see no reason to take a different view.

6. The Tribunal awarded a sum of Rs.1,57,000/- with interest. This cannot be said to be excessive by any standard. The award 19.06.2012 made in MCOP.No.126 of 2009 on the file of the Motor Accidents Claims Tribunal, cum Chief Judicial Magistrate, Thanjavur at Kumbakonam is confirmed.

7. The appellant is directed to deposit the entire compensation, 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, less the amount already deposited, if any. On such deposit, the claimants are entitled to withdraw their share as apportioned by the Tribunal, by filing proper application before the Tribunal, less the amount already withdrawn by them, if any.



8.This Civil Miscellaneous Appeal is dismissed. No costs.

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Sd/-
Assistant Registrar (AD-II)

/True Copy/

Sub Assistant Registrar

To

The Chief Judicial Magistrate /
Motor Accidents Claims Tribunal/
Chief Judicial Magistrate Court,
Thanjavur at Kumbakonam.

Copy To:-

The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 89357
+ 1 CC TO Mr.P.PRABHAKARAN, ADVOCATE IN SR No. 88999

SKM

TE/KKR/SAR-2 : 27/02/2018 : 3P/6C

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