



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.11.2017

CORAM :

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THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

C.M.A. (MD) Nos. 615 & 901 of 2017
and
C.M.P. (MD) No. 9625 of 2017

1. T. Muthulakshmi
2. Thangamurugachi
3. Narayana Vadivoo

... Appellants in
C.M.A. (MD) No. 615 of 2017
... Respondents in
C.M.A. (MD) No. 901 of 2017

Vs.

Tamil Nadu State Transport
Corporation Limited,
through its Managing Director,
Office at Bye Pass Road,
Madurai.

... Respondent in
C.M.A. (MD) No. 615 of 2017
... Appellant in
C.M.A. (MD) No. 901 of 2017

Common Prayer: Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree made in M.C.O.P.No.436 of 2010 dated 21.12.2012 on the file of the Motor Accident Claims Tribunal/I additional District Court, Tirunelveli.
In C.M.A. (MD) No. 615 of 2017

For Appellants : Mr. T. Selvakumaran

For Respondent : Mr. P. Prabhakaran

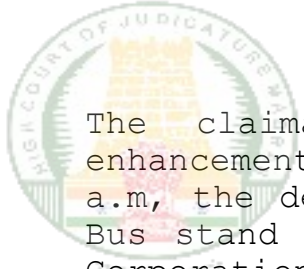
In C.M.A. (MD) No. 901 of 2017

For Appellant : Mr. P. Prabhakaran

For Respondents : Mr. T. Selvakumaran

COMMON JUDGMENT

Heard the learned counsel on either side.



The claimants have filed C.M.A.(MD).No.615 of 2017, seeking enhancement of the compensation amount. On 10.01.2010 at about 8.55 a.m, the deceased Selvamaharajan, was standing near Tirunelveli Old Bus stand near Raja building. The bus belonging to the appellant Corporation was coming from north to south. The deceased is said to have signalled the driver to stop the bus. According to PW2, the bus stopped for a moment and started immediately at high speed. The deceased was trying to enter through the front foot board. He lost his balance, fell down and sustained multiple injuries. He died. The Tribunal awarded a sum of Rs.13,46,008/- by award dated 21.12.2012. Challenging the same, both the parties are before this Court.

3.The learned counsel appearing for the claimants would submit that there is an apparent error on the face of the record. The Tribunal applied multiplier 13, taking into account, the age of the mother. It is the age of the deceased that must be taken into account. Therefore, the correct multiplier should be 18. The deceased was aged about 22 at the time of the accident. This submission is well founded. Multiplier that ought to be applied is 18 and not 13.

4.The learned counsel appearing for the appellant Corporation pointed out that even though Crime No.9 of 2010 was registered against the bus driver, it was later closed as "action dropped". This was because, the deceased invited the accident himself by attempting to get into a running bus. The Corporation pleaded contributory negligence on the part of the deceased and substantiated the same. The bus driver was examined as RW1. The Sub Inspector of Police who investigated the case was examined as RW2. The final report was marked as Ex.R1.

5.The learned counsel appearing for the claimant would submit that the evidence of PW2 eye witness must be considered. To a specific question put in cross examination as to whether there was a bus stop in the spot, the said witness feigned ignorance. If he was really present on the spot, he would have definitely played some role. He would have been the defacto complainant or he would have taken the deceased to the hospital. He had done nothing. He came to the Court to depose. Therefore the evidence of the said so-called eye witness does not inspire any confidence.

6.It is obvious that the deceased was attempting to board the running bus. Therefore, he ought to be fastened with a degree of negligence. At the same time, the bus driver cannot be absolved of his liability. The bus driver ought to have noted that the deceased was attempting to get into the bus. He could have stopped and averted the accident. Therefore, the bus driver also must be made to share a major portion of the liability. Considering the facts and circumstances of this case 30% of contributory negligence is fixed on the deceased. Therefore, even after applying the correct multiplier 18 in view of the aforesaid fixing of contributory



negligence on the deceased the award amount does not require any modification. It stands confirmed. Both the appeals stand dismissed.

7. The Transport Corporation is directed to deposit the entire rounded compensation amount of Rs.13,46,025/- 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 first and second appellants in C.M.A.(MD).No.615 of 2017 in 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.Both Civil Miscellaneous Appeals are dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(W)

/True Copy/

Sub-Assistant Registrar

To

The I Additional District Judge,
Motor Accident Claims Tribunal,
I additional District Court, Tirunelveli.

Copy to:-

The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court, Madurai.

+One cc to Mr.P.Prabhakaran, Advocate, SR.No.87080
+One cc to Mr.T.Selvakumaran, Advocate, SR.No.87529

tsg
RL/5C/3P/JC/SAR1/21/12/2017

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and
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