



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.12.2017

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A.(MD)No.720 of 2017

and

C.M.P.(MD).Nos.11726 and 7612 of 2017

The Managing Director,
Tamil Nadu State Transport Corporation,
Periyamilaguparai, Collector's Office Road,
Trichy. ... Appellant/Respondent

Vs.

1.M.Eswari
2.Minor M.Hemalatha
(The 2nd respondent is minor represented by
their mother and guardian M.Eswari, the
1st respondent)
3.Palaniammal ... Respondents/Petitioners

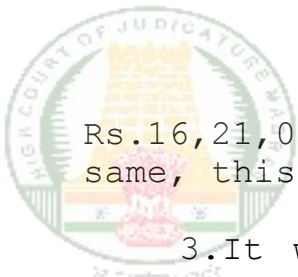
Prayer: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the award and decree made in M.C.O.P.No.456 of 2012 dated 14.03.2016, on the file of the Motor Accident Claims Tribunal/Sub Court, Kulithalai.

For Appellant : Mr.P.Prabhakaran
For Respondents : Mr.V.Kannan

JUDGMENT

Heard the learned counsel on either side.

2.The Transport Corporation has filed this appeal questioning the impugned award both on the ground of negligence as well as quantum. One Mohandas, was riding, a two wheeler on Koudampatti to Trichy main road on 21.09.2012 at about 8.30 a.m. The bus belonging to the appellant Corporation coming from the opposite corporation hit him. In the resulting accident, the said Mohandoss died. Crime No.475 of 2012, was registered on the file of the Kulithalai Police Station, against the driver of the bus belonging to the appellant herein. The Tribunal awarded a sum of



Rs.16,21,000/- as compensation to the claimants. Questioning the same, this appeal has been filed.

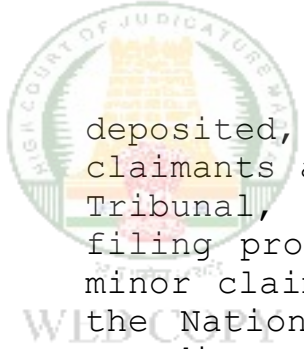
3.It was pointed out by the appellant that the deceased was not possessing any driving licence. He was also not wearing helmet at the time of the accident. As per Section 129 of the Motor Vehicles Act, 1998, every person riding the motor cycle should wear a protective head gear. In this case if the deceased had been wearing a helmet, the death would not have occurred. The onus to establish negligence lies only on the claimants. In this case, no doubt the claimants had examined Dharmaraj, who was the pillion rider.

4.Per contra, the appellant Corporation has examined the bus driver. Therefore, it is a question of oath against oath. The claimant has not chosen to mark the rough sketch. If the rough sketch had been marked, this Court could have come to the conclusion who was really at fault. It is also recorded that the bus driver was prosecuted but found not guilty by the Criminal Court . Considering what had taken place, I am inclined to fasten contributory negligence at 10% on the deceased.

5.Coming to quantum, it is seen that the accident took place in the year 2012. The claimants have not filed any income proof. Therefore, the monthly income has to be taken as Rs.6,500/-. Future prospects at 40% will have to be added. The deceased was aged about 31 years at the time of the accident. Therefore the multiplier will be 16. The dependants are three in number. Therefore $\frac{1}{3}^{\text{rd}}$ deduction has to be made. Applying the usual formula, the income for the family will be Rs.11,64,800/- (Rs.6067/-X12X16). This is rounded off to Rs.11,65,000/- Since there are four claimants, for loss of consortium and loss of love and affection a sum of Rs.1,20,000/- can be awarded. For loss of estate and funeral expenses further a sum of Rs.30,000/- can be awarded. Therefore, the compensation payable to the claimants has to be quantified at Rs.13,15,000/-. Since contributory negligence of 10% has been fastened on the deceased, the same will have to be reduced to Rs.11,83,500/- with interest.

6.Therefore, the award made in M.C.O.P.No.456 of 2012 dated 14.03.2016, on the file of the Motor Accident Claims Tribunal/Sub Court, Kulithalai, is modified. The claimants will be entitled to the said compensation amount in the same proposition as fixed by the Tribunal.

7.The appellant is directed to deposit the compensation amount of Rs.11,83,500/- 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 judgment less the amount already



deposited, if any. On such deposit, the respondents 1 to 3 / 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. The share of the minor claimant/second respondent shall be deposited in any one of the Nationalised Bank till she attains majority. The natural guardian and her mother / first respondent is permitted to withdraw the interest therefrom once in three months directly from the Bank.

8.This Civil Miscellaneous Appeal is partly allowed accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/
Assistant Registrar (CS-II)

/True copy/

Sub Assistant Registrar

To

1.The Subordinate Judge, Sub Court,
the Motor Accident Claims Tribunal, Kulithalai,

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.(2 COPIES)

+1cc to Mr.P.PRABHAKARAN, Advocate, SR.No.93673
+1cc to Mr.V.KANNAN, Advocate, SR.No.93919

C.M.A. (MD) No.720 of 2017
19.12.2017

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KK/SKN RSK/SAR-1/13.06.2018/3P-6C