



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.10.2017

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A. (MD) No.497 of 2015 and
MP (MD) No.1 of 2015

The Managing Director,
Tamil Nadu State Transport Corporation,
Junction Road, Milagu Parai,
Thuvakudi Branch, Trichy.

... Appellant/Respondent

Vs.

1.Indhira
2.Minor Vignesh
3.Minor Dinesh
(The Respondents 2 and 3 are minors
represented by their mother and next
friend the 1st respondent Indhira)

4.Kamalam

... Respondents/Petitioners

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree made in MCOP.No.908 of 2012 dated 05.09.2014 on the file of the Motor Accident Claims Tribunal/Special District Court, Thanjavur.

For Appellant : Mr.P.Prabhakaran
For Respondents : No Appearance

JUDGMENT

Tamil Nadu State Transport Corporation has filed this appeal questioning the award dated 05.09.2014 made in MCOP.No.908/2012 on the file of the Motor Accident Claims Tribunal/Special District Court, Thanjavur.

2.The claimants are the wife and children and mother of the deceased. The deceased Murugesan was riding a two wheeler and there was a head on collision with the bus belonging to the appellant corporation. The accident took place on 24.06.2010. The Tribunal fixed negligence on the driver of the appellant corporation. It awarded a sum of Rs.11,71,000/- in favour of the claimants. Questioning the same, this appeal has been filed.

3.The learned counsel for the appellant corporation rightly pointed out that the F.I.R in this case was lodged at the instance of the driver of the appellant corporation against the deceased.



The driver of the appellant corporation had specifically alleged in the F.I.R that the bus was going on the extreme left side when the deceased riding his two wheeler came from the opposite direction on the wrong side and dashed against the bus belonging to the appellant corporation. But, the Tribunal has erroneously preceded on the footing that F.I.R was registered against the driver of the appellant corporation. The learned counsel for the appellant corporation is factually correct in his contention. But, on this ground the award of the Tribunal cannot be interfered with.

4. In this case, the appellant corporation did not choose to examine its driver before the Tribunal. Even, the F.I.R was marked only by the claimants. The best person to speak about the occurrence was the driver of the appellant corporation. He did not enter the witness box. For reasons best known, the appellant corporation did not examine him as its witness. Therefore, it must be taken that the version projected by the claimants is not questioned. It is true that PW.2 was also said to be an eye witness. He was broadly cross examined. Based on the answers elicited during cross examination of PW.2, contributory negligence could not be fixed on the deceased.

5. I therefore sustain the finding of the Tribunal in this regard. The Tribunal fixed the monthly income only at Rs.6,000/-. After adding 30% towards future prospects, one third reduction was made. Damages awarded under other heads cannot be said to be excessive. There is no reason to interfere with the award passed by the Tribunal. This appeal is therefore dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Crl.side)

/True Copy/

Sub Assistant Registrar

To

The Special District Judge,
Motor Accident Claims Tribunal,
Thanjavur.

Copy To:-

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

+ 1 CC TO Mr.P.PRABHAKAR, ADVOCATE IN SR No. 82903

SKM

TE/SV-MMS/SAR-II : 02/11/2017 : 2P/4C
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13.10.2017