



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.10.2017

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A(MD) No.817 of 2014

1.P.Ponkumaradhas
2.P.Mary Anni Bai : Appellants/Claimants

Vs.

1.R.Murugan (Driver),
Tamil Nadu State Transport Corporation Limited,
Madurai Division, Ranithottam,
Nagercoil,
Kanyakumari District.

2.The Managing Director,
TNSTC represented by General Manager,
Tamil Nadu State Transport Corporation Limited,
Madurai Division, Ranithottam,
Nagercoil,
Kanyakumari District.

3.The Branch Manager,
The National Insurance Company Limited,
Anguvilas Building, North Car Street,
Nagercoil. : Respondents / Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the Fair and Decretal order, dated 11.10.2012 made in MCOP No.15 of 2011 on the file of Motor Accident Claims Tribunal cum Chief Judicial Magistrate, Nagercoil @ Kanyakumari District.

For Appellants: Mr.D.Senthil
For R-1 : No appearance
For R-2 : Mr.P.Manoharan
For R-3 : Mr.J.S.Murali

JUDGMENT

(Judgment of the Court was made by K.KALYANASUNDARAM,J)

Challenging the award passed by the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Nagercoil @ Kanyakumari District, in M.C.O.P.No.15 of 2011, dated 11.10.2012, the claimants have preferred this appeal.



2.The parents of the deceased Sundar Kumar filed MCOP No.15 of 2010 claiming compensation of Rs.15,50,000/- on the ground that their son died in an accident on 02.04.2009. It is an admitted fact that the motor cycle TN-74-P-4730 belongs to the first claimant and on the date of accident, the deceased was riding the motor cycle. The tribunal, having held that the owner/insured himself cannot claim compensation against the insurer, dismissed the claim petition. Assailing the Judgment and Decree, the present appeal is filed.

3.The brief facts of the case are that on 02.04.2009 at about 04.15 p.m., the deceased P.Sundar Kumar was riding the Motorcycle TN-74-P-4730 from Pillaiyarpuram to Nagercoil. After getting signal from the driver of the bus, when the deceased was overtaking the bus of the Tamil Nadu State Transport Corporation TN-74-N-0507, the driver of the bus turned the bus in the right side of the road and dashed the motorcycle. In the impact, he fell down and died on the spot. The Inspector of Police, attached to Kottar Traffic Investigation Wing, Nagercoil, registered a case in Crime No.55 of 2009. The claimants have alleged that the accident had taken place due to negligence of the driver of the Tamil Nadu State Transport Corporation.

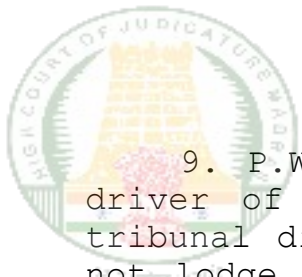
4.Opposing the claim, the second respondent Transport Corporation filed a counter stating that the accident occurred only due to rash and negligent driving of the deceased and the Insurance Company is liable to pay compensation. The third respondent has disputed their liability in their counter.

5.On the side of the claimants, the first claimant examined himself as P.W.1 and one Jeyaraj as P.W.2 and marked Exs.P1 to P13. On the side of the respondents, two witnesses were examined as R.W.1. and R.W.2 and 3 documents were marked as Exs.R1 to R3.

6.Heard Mr.D.Senthil, learned counsel for the appellants, Mr.P.Monoharan, learned counsel for the second respondent, Mr.J.S.Murali, learned counsel for the third respondent and perused the materials available on records.

7.From the perusal of Ex.P1 First Information Report, it is seen that the pillion rider is the complainant, in which, it is categorically stated that while overtaking the bus, the two wheeler came to the right side of the road and dashed against the electric post. Consequently, the motorcycle was lying in the middle of the road and in that process, the deceased was run over by the bus.

8.R.W.1, the driver of the bus TN-74-N-0507 has deposed that the deceased was riding the vehicle in a rash and negligent manner and in his attempt to overtake the bus, he hit against the electric



9. P.W.2, who is said to be an eyewitness has stated that the driver of the bus is responsible for the accident. However, the tribunal disbelieved the evidence of PW2 on the ground that he did not lodge the complaint to the police, nor he took the injured to the hospital. Moreover, the claimants have not examined the pillion rider of the Motorcycle, who has given complaint to the police. In our considered view, the Tribunal has rightly rejected the claim observing that the deceased was responsible for the accident. No other materials have been placed before this Court to take a different view. So, we do not find any merit in the appeal, warranting interference of this court.

10. In the result, the Civil Miscellaneous Appeal is dismissed, confirming the award of the tribunal. No costs.

Sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To

1. The Motor Accident Claims Tribunal - cum -
Chief Judicial Magistrate, Nagercoil,
Kanyakumari District.

2. The Managing Director,
TNSTC represented by General Manager,
Tamil Nadu State Transport Corporation Limited,
Madurai Division, Ranithottam,
Nagercoil, Kanyakumari District.

Copy to:

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

+1CC to Mr. J.S. Murali, Advocate, SR.No. 82430

+1CC to Mr. D. Senthil, Advocate, SR.No. 82230

+1CC to Mr. P. Prabhakaran, Advocate, SR.No. 82229

C.M.A (MD) No. 817 of 2014

10.10.2017

SM/GSP

AM/SV MMS/SAR 2/27.02.2018/3P/8C