



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.12.2017

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A. (MD) No.704 of 2016

and

C.M.P. (MD) .No.7227 of 2016

The Managing Director,
SETC,
having its office at Chennai,
Pallavan Salai,
Chennai.

... Appellant/2nd Respondent

Vs.

1.Usha
2.The Managing Director,
TNSTC,
Having his office at
Kumbakonam.

... 1st Respondent/Petitioner

... 2nd Respondent/1st Respondent

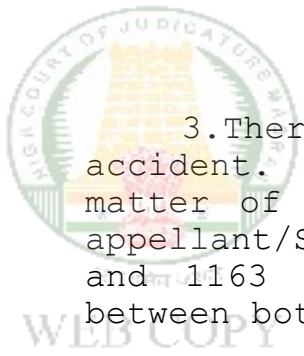
Prayer: This Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgment and decree dated 03.07.2014 made in M.C.O.P.No.1445 of 2011, on the file of the Motor Accident Claims Tribunal/Special Sub Court, Thanjavur.

For Appellant : Mr.P.Prabhakaran
For Respondents : Mr.K.M.Karunakaran for R1
: Mr.D.Sivaraman for R2

JUDGMENT

Heard the learned counsel on either side.

2.The State Express Transport Corporation has filed this appeal, questioning the impugned award principally on the ground of negligence. This was a case involving collision between the bus belonging to the appellant/State Express Transport Corporation and the bus belonging to the respondent/Tamil Nadu State Transport Corporation. The claimant was travelling in a Tamil Nadu State Transport Corporation bus. The claimant had made a specific allegation in her claim petition that the driver of the Tamil Nadu State Transport Corporation had from the beginning at the starting point at Thanjavur drove the vehicle in a rash and negligent manner. According to the claimant, the drivers of both the State Express Transport Corporation and Tamil Nadu State Transport Corporation are at fault.



3. There is another claim petition arising out of the same accident. Though in M.C.O.P.No.1445 of 2011, that is the subject matter of this appeal, the entire negligence was fastened on the appellant/State Express Transport Corporation, in M.C.O.P.Nos.1162 and 1163 of 2009, dated 12.03.2015, negligence was apportioned between both the bus drivers.

4. The learned counsel appearing for the State Express Transport Corporation/appellant herein would submit that this Court can adopt the same reasoning that was adopted in the subsequent claim proceedings.

5. Per contra, Mr.D.Sivaraman, learned Standing counsel appearing for the Second respondent herein, relied on the decision of the Hon'ble Supreme Court reported in 2006 11 SCC 709 (Col.B.J.Akkara (Retd) Vs. Government of India and others).

"The Hon'ble Supreme Court had observed that merely because a particular judgment of the High Court may not be challenged by the State where the financial repercussions are negligible or where the appeal itself is barred by its limitation. It is clearly possible that may also not be challenged due to negligence or oversight of the dealing officers or on account of wrong legal advice, or on account of the non-comprehension of the seriousness or magnitude of the issue involved. However, when similar matters subsequently crop up and the magnitude of the financial implications is realised, the state is not prevented or barred from challenging the subsequent decisions or resisting subsequent writ petitions, even though judgment in a case involving similar issue was allowed to reach finality in the case of others."

6. My attention is also brought to a circular dated 05.09.2005, issued by the Government of Tamil Nadu, wherein it is stated that if contributory negligence has been equally apportioned between the two sister Corporations, the appeal may not be filed. In the instant case, the appellant corporation would not be justified in calling upon by me to fix negligence equally between the appellant and the second respondent herein. I am in full agreement with the submission made by the second respondent. In so far as the present case is concerned, First Information Report was registered against the driver of the appellant corporation and final report was also filed against him. It is also seen that the accident occurred when the bus belonging to the appellant Corporation was attempting to overtake another vehicle. Therefore, the Tribunal, in this case rightly fixed the entire negligence on the driver of the appellant corporation. The award amount is only to the tune of Rs.1,79,000/-.



As regards the quantum of compensation, by no stretch of imagination can it be said to be excessive. I see no reason to interfere.

7.The award dated 03.07.2014 made in M.C.O.P.No.1445 of 2011, on the file of the Motor Accident Claims Tribunal/Special Sub Court, Thanjavur, is confirmed.

8.The appellant is directed to deposit the compensation amount of Rs.1,79,000/- 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 claimant is entitled to withdraw the same, less the amount already withdrawn by her, if any, by filing proper application before the Tribunal.

9.This Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar(CS-I)

To

1.The Special Sub Judge, Special Sub Court,
The Motor Accidents Claims Tribunal,
Thanjavur

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

+1cc to M/S.P.Prabhakaran, Advocate SR.No. 90737

+1cc to M/S.D.Sivaraman, Advocate SR.No. 90762

+1cc to M/S.K.M.Karunakaran, Advocate SR.No. 90729

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tsg

JM/PN/SAR 1/31.07.2018/3P/7C