



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 23.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

C.M.A. (MD) No.771 of 2016

& C.M.P (MD) Nos.7449 of 2016 & 618 of 2017
and

C.M.A (MD) No.126 of 2017

C.M.A. (MD) No.771 of 2016 :

The Tamil Nadu State Transport Corporation Ltd.,
Through its Managing Director,
Office at Kumbakonam.

... Appellant/Respondent

Vs.

1.Ayyrathan

... Respondent No.1/Petitioner No.1

2.Gunasundari

... Respondent No.2 /Petitioner No.2

Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgment and decree passed by the Motor Accident Claims Tribunal, First Additional District and Sessions Court, Tirunelveli in M.C.O.P.No.150 of 2013 dated 21.08.2015.

For Appellant : Mr.D.Sivaraman

For Respondents : Mr.T.Selvakumaran

C.M.A. (MD) No.126 of 2017 :

1.Ayyrathan

2.Gunasundari

...Appellants/Petitioners

-Vs-

The Tamil Nadu State Transport Corporation Ltd.,
Through its Managing Director,
Office at Kumbakonam.

... Respondent/Respondent

Appeal filed under Section 173 of Motor Vehicles Act, 1988, to allow this appeal and enhance the award amount in M.C.O.P.No.150 of 2013 on the file of the Motor Accident Claims Tribunal, First Additional District and Sessions Court, Tirunelveli dated 21.08.2015.

For Appellants : Mr.T.Selvakumaran

For Respondent : Mr.D.Sivaraman



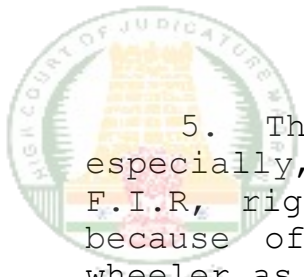
COMMON JUDGMENT

C.M.A.(MD)No.771 of 2016 has been filed by the Transport Corporation against the fixing of negligence at the ratio of 50:50 and the C.M.A.(MD)No.126 of 2017 has been preferred by the claimants against the award amount and both these appeals are filed against the common award arising out of the accident, in which, one Suresh died on 06.05.2012, when he was riding his two wheeler, which was allegedly hit down by the bus driven in a rash and negligent manner belonging to the Transport Corporation, by fixing the liability at the ratio of 50:50 on the part of the rider of the two wheeler as well as the driver of the Transport Corporation bus.

2. Heard Mr.D.Sivaraman, learned Counsel appearing for the appellant Transport Corporation and Mr.T.Selvakumaran, learned Counsel appearing for the respondents/claimants.

3. Mr.T.Selvakumaran, learned Counsel appearing for the claimants would submit that PW.2 eye-witness categorically stated that the driver of the bus tried to avoid the speed-breaker, turned in the mud side and in the process to cross that portion of the road, hit against the motorcyclist. He relied upon the judgment in **Muniyasamy and others -Vs- The Managing Director, Tamil Nadu State Transport Corporation Ltd.** reported in **2013(1) TN MAC 854**, wherein, even then, whether he was convicted or acquitted, so far as negligence aspect is concerned, it must be independently decided by the Tribunal based on the evidence adduced before it. The other judgments in **Managing Director, Tamil Nadu State Transport Corporation (Villupuram Division III) Ltd., Kancheepuram -vs- L.Chandramani** reported in **2011 (2) TN MAC 688** and **the Divisional Manager, New India Assurance Co.Ltd., Cuddalore -vs- District Superintendent of Police, Vellore District, Vellore-9 and others** reported in **(2012) 4 MLJ 670** are relied upon by him to stress the point that rough sketch alone cannot be taken as a conclusive evidence to prove the manner of the accident.

4. On the other hand, Mr.D.Sivaraman, learned Counsel appearing for the Transport Corporation also found fault with the Tribunal for having fixed 50% negligence on the part of the driver of the Corporation. He relied upon Ex.R1-First Information Report(F.I.R) to show that the rider of the two wheeler who died, alone was responsible for the accident and the F.I.R was registered against him. He would also rely upon the judgment of the Honourable Supreme Court in **Reshma Kumari and Another -vs- Madan Mohan and Another** reported in **(2013) 9 SCC 65** to show that since the claim petition has been filed under Section 166 of the Motor Vehicles Act, the burden of proof is entirely on the claimants.



5. The Tribunal on appreciating the evidence on record, especially, the evidence of PW.2 and R.W.2 and filing of Ex.R.1-F.I.R, rightly came to the conclusion that the accident occurred because of the negligence on the part of the rider of the two wheeler as well as the driver of the Corporation bus.

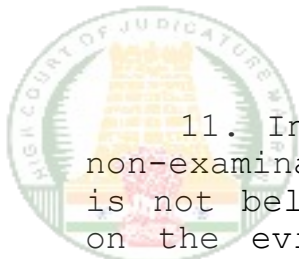
6. Merely because F.I.R has been registered against the rider of the two wheeler, it does not mean that the deceased was at fault. F.I.R is only a piece of evidence and that has to be corroborated. The complainant regarding the accident was not examined. PW.2 stated that the accident occurred because of the driver of the corporation to avoid the speed breaker, dashed against the two wheeler. However, only on the right side of the bus, the damage was caused.

7. RW.2 also stated that because of the negligence of the driver of the two wheeler only, the accident occurred. The Transport Corporation failed to examine the author of the complaint, namely, Arun to prove that the deceased hit a old man and because of that, the villagers chased him and in a hurry, he drove the vehicle speedily and dashed against the bus. Therefore, it is evident that the rider of the two wheeler was also negligence and the driver of the bus would avoid the accident, even if the two wheeler was not driven in a rash and negligent manner by driving the vehicle slowly

8. Though different reasons have given by the Tribunal to come to the conclusion that both are equally responsible for the accident, this Court finds that both of them are responsible for the accident and that too, the two wheeler was driven in a rash and negligent manner and equally the driver of the bus would have careful enough to avoid the accident. The important peace of evidence namely Ex.P.1 was not corroborated by any of the witnesses and the author of the complaint was not examined and therefore, the transport corporation did not prove the accident as per Ex.R.1-F.I.R.

9. As pointed out by Mr.T.Selvakumaran, learned Counsel for the claimants, the dictum laid down in the judgments in **Muniasamy and others -Vs- The Managing Director, Tamil Nadu State Transport Corporation Ltd.** reported in **2013(1) TN MAC 854** and **Managing Director, Tamil Nadu State Transport Corporation (Villupuram Division III) Ltd., Kancheepuram -vs- L.Chandramani** reported in **2011 (2) TN MAC 688**, wherein it is held that in spite of filing of F.I.R as against the deceased and even if conviction is there, the Tribunal has to independently analyse the evidence and reach a conclusion, has been rightly followed by the Tribunal.

10. The other judgments relied upon by Mr.T.Selvarkumaran, learned Counsel for the claimants, in **The Divisional Manager, New India Assurance Co.Ltd., Cuddalore -vs- District Superintendent of Police, Vellore District, Vellore-9 and others** reported in **(2012) 4 MLJ 670** are with regard to the marking of sketch, wherein it is held that the sketch has to be taken as a peace of evidence and not as a conclusive one.



11. In this case, even though the F.I.R has been filed, due to non-examination of the author and for non-corroboration, this Court is not believing the allegations made therein and therefore, based on the evidence of PW.1 and RW.2 alone, the negligence has been fixed.

12. Similarly, with regard to the judgment relied upon by the learned Counsel for the transport corporation in **Reshma Kumari and Another -vs- Madan Mohan and Another** reported in (2013) 9 SCC 65, it is a bounden duty of the claimants to prove the negligence with regard to the claim petition filed under Section 166 of the Motor Vehicles Act. When the evidence of both parties are available, this Court analyses the evidence in toto and therefore, finds that the Tribunal reached the best findings. Hence, the fastening of negligence at the ratio of 50:50 on the rider of the two wheeler as well as the driver of the Transport Corporation bus, is based on evidence and therefore, this Court cannot find fault with the same.

13. Accordingly, both these Civil Miscellaneous Appeals are dismissed. The appellant Transport Corporation is directed to deposit the entire award amount after deducting the amount which has already been deposited, if any, within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the Tribunal is directed to transfer the entire award amount to the personal Savings Bank Account Numbers of the respondents/claimants by RTGS/NEFT within a period of four weeks from the date of receipt of a copy of this judgment. Consequently, the connected Miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub-Assistant Registrar

To

1.The Motor Accident Claims Tribunal,
First Additional District and Sessions Court,
Tirunelveli.

2.The V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC TO MR.D.SIVARAMAN,ADVOCATE,SR NOS.10121&10122

gsr

MAS/RR:28.03.2017:4P-4C

C.M.A. (MD) Nos.771 of 2016 & 126 of 2017
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