



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.11.2017
CORAM

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THE HONOURABLE MR. JUSTICE G.R. SWAMINATHANC.M.A. (MD) .No.729 of 2015andM.P (MD) .No.1 of 2015andC.M.A. (MD) .No.958 of 2017In C.M.A. (MD) .No.729 of 2015The Managing Director,
Tamil Nadu State Transport Corporation Limited,
Villupuram.... Appellant/1st Respondent

Vs

1.S.Selvaraj

2.S.Poongothai

3.S.Kayalvizhi Sharmila ... Respondents 1 to3 / Petitioners

4.P.Ganapathy

5.United India Insurance Company Limited,
81-C, W.G.C Road,
Thoothukudi....Respondent 4 & 5/
Respondent 2 & 3

PRAYER in C.M.A.(MD).No.729 of 2015:- Civil Miscellaneous Appeal filed under Section173 of Motor Vehicle Act, 1988, to allow this appeal, set aside the judgment and decree dated 30.06.2014 passed in M.C.O.P.No.114/2013 on the file of the Motor Accidents Claims Tribunal / II Additional District Court, Thoothukudi.

For Appellant : Mr.P.Prabhakaran
For R1 to R3 : Mr.S.Siva Thilakar
For R4 : No Appearance
For R5 : Mr.K.A.Thirumalaiappan.In C.M.A. (MD) .No.958 of 2017

1.S.Selvaraj

2.S.Poongothai

3.S.Kayalvizhi Sharmila

... Petitioners/Appellants

<https://hcservices.ecourts.gov.in/hcservices/>

Vs.

1.The Managing Director,
Tamil Nadu State Transport Corporation Limited,
Villupuram.



2.P.Ganapathy

3.United India Insurance Company Limited,
No.81-C, W.G.C. Road,
Thoothukudi.

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... Respondents/Respondents

Prayer in C.M.A.(MD).No.958 of 2017:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 to modify the Judgment and Decree dated 30.06.2014 made in M.C.O.P 114 of 2013 on the file of Motor Accidents Claims Tribunal, II Additional District Judge, Tuticorin.

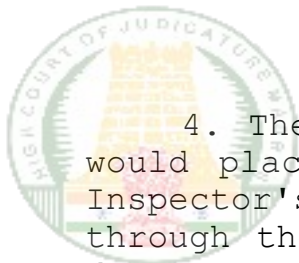
For Appellants	: Mr.S.Siva Thilakar
For R1	: Mr.P.Prabhakaran
For R2	: No Appearance
For R3	: Mr.A.S.Mathialagan

COMMON JUDGMENT

Heard the learned counsel on either side.

2.The appellant Transport Corporation has filed C.M.A(MD). No.729 of 2015, questioning the impugned award. The claimants have also filed C.M.A.(MD).No.968 of 2017 seeking enhancement. The claimants are the parents and sister of the deceased. The deceased was riding a two-wheeler on 01.11.2012 in Sriperumbathur-Chennai Main Road. It is alleged that in order to avoid dashing against the sudden crossing of the road by a cow, he applied sudden brake. The bus belonging to the Transport Corporation was coming from close behind. The bus dashed against the two-wheeler. In the resulting accident, the son of the claimants Chinna Samy died. He was a IV year Engineering College student. He was aged around 22 years. The Tribunal awarded a sum of Rs.11,25,000/- with interest at 7.5% per annum. Claiming that the said amount is not adequate, the claimants had applied for enhancement. On the other hand, the Transport Corporation would contend that fastening the entire negligence on the driver of the Corporation is not justified.

3. The learned counsel appearing for the claimants would contend that if the bus had maintained a reasonable safety distance, the accident could have been avoided. On the other hand, the learned counsel appearing for the Corporation would submit that the bus driver ought not to be fully blamed for this accident. He has also placed reliance on the decision of the Hon'ble Supreme Court reported in 2013 (2) TN MAC 724 (SC) - *Radhakrishnan and another v. Gokul and others*. The said decision also involved the death of the Engineering College student. The Hon'ble Supreme Court awarded a lump sum of Rs.7,00,000/- with interest from the date of claim petition. In the present case, the accident took place in the year 2012. Therefore it would not be proper to follow the said decision in this case as regards quantum.



4. The learned counsel appearing for the Transport Corporation would place heavy reliance on Ex.B.3, which is the Motor Vehicle Inspector's Report of the offending vehicle. This Court went through the said report. With regard to the details regarding the damage sustained by the vehicle due to the accident has been mentioned that there is no damage caused to the bus. This clearly probabalise the contention of the learned counsel for the Corporation that the bus had not dashed against the two-wheeler. On account of sudden crossing of the cow, the rider of the two wheeler must have lost his balance and fallen on the road. Even if the driver had maintained sufficient safety distance, the accident could not have been avoided. Therefore, the Contributory negligence can be fixed on the deceased also at 10%. The Tribunal had correctly computed the quantum of compensation payable. Therefore, the same is reduced by 10%. The claimants are entitled to sum of Rs.10,13,000/-. The award dated 30.06.2014 passed in M.C.O.P.No.114/2013 on the file of the Motor Accidents Claims Tribunal / II Additional District Court, Thoothukudi is accordingly modified.

5. The appellant Transport Corporation is liable to pay the said compensation amount with interest at 7.5% per annum and cost from the date of petition till the date of realization within a period of twelve weeks from the date of receipt of a copy of this order, less the amount already deposited, if any. On such deposit the claimants are entitled to withdraw the entire amount as apportioned by the Tribunal, less the amount already withdrawn by them, if any, by filing proper application before the Tribunal.

6. The appeal filed by the Transport Corporation in C.M.A(MD). No.729 of 2015 is partly allowed. The Civil Miscellaneous Appeal filed by the claimants in C.M.A(MD).No.958 of 2017 is dismissed. No costs. Consequently, M.P(MD).No.1 of 2015 in C.M.A(MD).No.729 of 2015 is closed.

Sd/-

Assistant Registrar(CSI)

/True Copy/

Sub-Assistant Registrar

To

1. The Motor Accidents Claims Tribunal /
II Additional District Court, Thoothukudi.

2. The Managing Director,

Tamil Nadu State Transport Corporation Limited, Villupuram.

Copy to:-

The Record Keeper,

Madurai Bench of Madras High Court, Madurai.

+One cc to Mr.P.Prabhakaran, Advocate, SR.No.85886

+One cc to Mr.S.Sivathilakar, Advocate, SR.No.85860

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RL/6C/3P/KK/SAR1/27/11/2017

C.M.A. (MD).No.729 of 2015

and

C.M.A. (MD).No.958 of 2017

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