



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.11.2017

CORAM :

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A. (MD) No.857 of 2016
and
C.M.P (MD) .No.7991 of 2016

The Managing Director,
Tamil Nadu State Transport Corporation,
Pudukkottai.

... Appellant/Respondent

Vs.

- 1.Rajalakshmi
- 2.Minor Anushiya
- 3.Minor Ajai
- 4.Minor Arjun

(Minors 2 to 4 are represented through their
mother and natural guardian Rajalakshmi
the first respondent herein)

- 5.Chinnathal
- 6.Chinnaiah (Died)

... Respondents/Petitioners

Prayer: The appeal filed under Section 173 of the Motor Vehicle Act, 1988, against the Judgment and Decreetal order dated 30.11.2015 made in M.C.O.P No.267 of 2013 on the file of the Motor Accident Claims Tribunal/Additional District Court, Pudukkottai.

For Appellant : Mr.D.Sivaraman

Standing Counsel

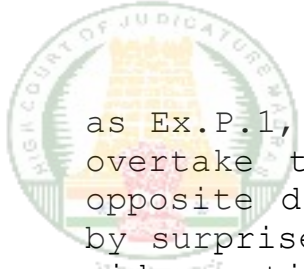
For R-1 to 5 : Mr.K.N.Govardhanan

J U D G M E N T

Heard the learned Standing Counsel appearing for the appellant and the learned counsel appearing for the respondents 1 to 5.

2.The Transport Corporation has filed this appeal questioning the impugned award principally on the ground of the negligence.

3.The deceased Murugan was travelling along with two others on 10.04.2012 in Keeranoor-Pudukkottai road. The bus belonging to the appellant Transport Corporation was going South to North in the said road. From a reading of the FIR marked



as Ex.P.1, it could be seen that the said two wheeler attempted to overtake the said bus. Since another bus was coming from the opposite direction, the rider of the two wheeler Suresh was taken by surprise and lost his balance and grazed against the rear right side portion of the bus. In the process, the rider fell down. The pillion rider Murugan also fell down, suffered head injuries and died. His wife, minor children and his mother filed M.C.O.P No.267 of 2016 on the file of the Motor Accident Claims Tribunal/Additional District Court, Pudukkottai. Interestingly, the claimants made the appellant Transport Corporation alone as the respondent. The rider of the two wheeler or the owner of the two wheeler or the insurer of the two wheeler was not made as parties. It appears that one other person was shown as a respondent but his name was struck off as could be seen from the records. The rider of the two wheeler was not examined, to explain the manner of the said accident. One P.W.2 was examined as an alleged eye witness. He was obviously a set up witness. More than anything else, the report of the Motor Vehicle Inspector-Ex.P.5 speaks volumes.

4.I went through the said report. It is seen that the right side rear portion of the bus paintings had been peeled off. Such damage to the bus can happen since the two wheeler grazed against the bus.

5. The learned counsel appearing for the respondent would still contend that the two wheeler hit against the bus on the back side of the bus. Since the bus driver applied sudden brake, if so, the best person to speak about it would only be the rider of the two wheeler. For reasons best known the claimant have not chosen to examine him. The best witness has been withheld and was not examined by the claimant. On the other hand the appellant Transport Corporation examined Alagarsamy, the driver of the bus as D.W.1. The said Alagarsamy has stated that three persons travelled in the said two wheeler. One of them was Murugan. He died. The other two injured riders were admitted in the hospital. The appellant had also examined Selvaraj as D.W.2 through him the final report Ex.R.2 was marked. The names of the persons who rode the two wheeler had been mentioned.

6. In these circumstances, the contention of the learned Counsel appearing for the appellant that the entire negligence should be fastened only on the rider of the two wheeler cannot be rejected outright. I have no doubt in my mind that three persons travelled in the said two wheeler. The Division Bench of this Court had held that if three persons travelled in a two wheeler, they would be seated in cramped manner and even, if there is slight loss of balance, the pillion rider is bound to fall. Therefore, the Tribunal ought to have fixed contributory negligence of the rider of the two wheeler at 60%. Therefore, the award passed by the Tribunal requires modification.



7. The claimants can be held entitled to only 40% of the compensation. If the compensation amount payable to the claimant is re-worked, it come to Rs.4,89,800/- with interest at the rate of 7.5% per annum. Since there are three minor children and a aged mother the same can be rounded off to Rs.5,00,000/-.

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8. The appellant Transport Corporation is directed to deposit the compensation amount of Rs.5,00,000/- with interest at the rate of 7.5% per annum and 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 first and the fifth respondents/claimants are permitted to withdraw their respective shares as apportioned by the Tribunal, less the amount already withdrawn by them, if any by filing proper petition before the Tribunal. The share of the minor claimants shall be deposited in any one of the Nationalised Bank in an interest bearing account and the natural guardian/mother of the minor claimants is permitted to withdraw the accrued interest once in three months directly from the bank, only for the welfare of minor claimants, till they attain majority.

9. The award dated 30.11.2015 made in M.C.O.P No.267 of 2013 on the file of the Motor Accident Claims Tribunal/Additional District Court, Pudukkottai, is modified accordingly. This Civil Miscellaneous Appeal is partly allowed. No costs.

Sd/

Assistant Registrar (CS-I)

/True copy/

Sub Assistant Registrar

To:

The Additional District Judge,
Motor Accident Claims Tribunal,
Pudukkottai.

Copy to
The Section Officer, Vernacular Records,
Madurai Bench of Madras High Court,
Madurai. (2 COPIES)

+1cc to Mr.D.Sivaraman, Advocate, SR.No.90483

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