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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.12.2017

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A. (MD) No.863 of 2016

and

C.M.P. (MD) No.8048 of 2016

The Managing Director,
Tamil Nadu State Transport Corporation
Trichy - 613 001.

... Appellant/Respondent

Vs.

1. Malathi
2. Minor Prahadeeswaran
3. Minor Venkatesan
4. Gandhimathi

(Minors 2 and 3 are represented through
their mother and natural guardian

Malathi, the 1st respondent herein) ... Respondents/Petitioner

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgment and decree dated 07.01.2016 made in M.C.O.P.No.502/2012 on the file of the Special District Court, Motor Accident Claims Tribunal, Thanjavur.

For Appellant	: Mr.D.Sivaraman
For Respondents	: Mr.V.Ramamorrthy for RR1-4

JUDGMENT

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

2.One Soundar @ Soundararajan had travelled with four other friends in a Tata Sumo from Thiruvaiyaru to Courtallam on 19.08.2009 at about 10.00 p.m. When the Tata Sumo was stopped enroute, the said Soundararajan got down and hastily attempted to cross the road. Though in the claim petition, it is claimed that the said Soundararajan got down to take tea in a nearby tea stall, in the FIR, a different version has been set out. Following the death of the said Soundararajan on being hit by the bus belonging to the appellant Corporation, crime No.220 of 2009 was registered on the file of Thiruvaiyaru Police Station. The said FIR was lodged by a co-passenger and the friend of the deceased Soundararajan. In the said FIR, it has been categorically mentioned that all the occupants of the Tata Sumo car including Soundararajan were under the influence of alcohol. Notwithstanding the fact that they have already taken alcohol, the said Soundararajan wanted to buy himself one more bottle of



brandy. Therefore, the Tata Sumo car was stopped and the said Soundararajan is said to have attempted to run across to buy brandy from a liquor outlet. In the meanwhile, the bus belonging to the appellant Corporation coming from South to North had hit the said Soundararajan.

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3.The learned counsel for the appellant Corporation would contend that under these circumstances, the entire negligence should be fastened only on the deceased and that therefore the appellant Transport Corporation must be exonerated of all liability. Though the contents of FIR are against the claim petition averments, it is a fact that in the postmortem certificate, there is no mentioning of the presence of alcohol in the body of the deceased. It is also relevant to mention here that the informant, who laid FIR was not examined by the appellant Corporation. But the FIR was marked as Ex.P1 by the claimants themselves. Therefore, they cannot completely disown its contents. It is seen from the said FIR that the deceased had attempted to run across the road. It was night hour. Therefore the driver driving the bus cannot be expected to take note of the pedestrian suddenly crossed the road. Considering the facts and circumstances of the case, I am of the view that atleast 25% negligence will have to be fastened on the deceased.

4.As regards quantum, I am of the view that the Tribunal has applied the correct parameters. Since 25% negligence is fastened on the deceased, the compensation payable to the claimants will have to be accordingly reduced to Rs.7,70,178/-. Thus, the claimants are entitled to a sum of Rs.7,70,178/- in the same apportionment laid down by the Tribunal.

5.Accordingly, the award dated 07.01.2016 made in M.C.O.P.No.502/2012 on the file of the Special District Court, Thanjavur is modified.

6.The appellant Transport Corporation is directed to deposit the entire compensation amount of Rs.7,70,178/- with interest at the rate of 7.5% per annum, from the date of petition till the date of realization and costs, 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 claimants 1 and 4/who are the wife and mother of the deceased are permitted to withdraw their share amount as apportioned by the Tribunal by filing proper application before the Tribunal. The share of the minors shall be deposited in any one of the nationalised bank as directed by the Tribunal and the guardian of the minor claimants is permitted to withdraw the interest accrued thereon once in three months directly from the bank, till they attain majority.



7. This Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

1. The Special District Judge,
(Motor Accident Claims Tribunal), Thanjavur.
2. The Record Keeper,
Vernacular Records, (2 Copies)
Madurai Bench of Madras High Court, Madurai.

+1cc to Mr.D.Sivaraman, Advocate SR.No.91631

Arul

MK/PN/SAR 4/11.07.2018/3P/5C

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