



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 14.12.2017

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A. (MD) No.866 of 2016
and
C.M.P. (MD) Nos.8053 of 2016

The General Manager,
Tamil Nadu State Transport
Corporation Ltd,
Having Office at Kumbakonam.

... Appellant/Respondent No.2

Vs.

1.Sulthan
2.Jamila
3.S.Faridha

... Respondents 1 to 3/Petitioners 1 to 3

4.Tamil Nadu State Transport Corporation Ltd.,
Having Office at Bye-pass Road,
Madurai.
(Through its General Manager)

... Respondent No.4/Respondent No.1

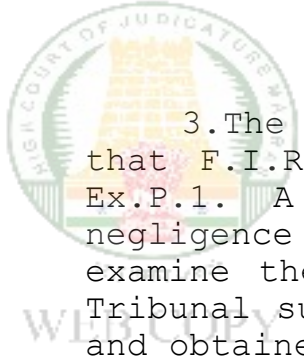
PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicle Act, 1988, to set aside the judgment and decree passed by the Motor Accident Claims Tribunal, IV Additional District Judge, Madurai in M.C.O.P.No.236 of 2011 dated 22.12.2015.

For Appellant	: Mr.D.Sivaraman
For Respondents No.1 to 3	: Mr.K.Kumaravel
For Respondent No.4	: Mr.K.Sudalaiyandi

JUDGMENT

The deceased Shajahan was riding a two wheeler on 23.05.2009 at about 09.00 p.m in Madurai-Trichy main road. He was going from west to east. The bus belonging to the appellant Corporation and the said two wheeler collided with each other. In the resulting accident, the said Shajahan died. Crime No.338 of 2009 was registered on the file of the Melur Police Station. His parents and sister filed M.C.O.P.No.236 of 2011 on the file of the Motor Accident Claims Tribunal, IV Additional District Judge, Madurai. The Tribunal passed an award for a sum of Rs.9,57,000/- with interest.

2.Contending that the Tribunal erroneously fixed the negligence on the part of the bus driver, this appeal has been filed by the Transport Corporation.



3.The learned counsel appearing for the appellant pointed out that F.I.R was lodged by the pillion rider, which was marked as Ex.P.1. A mere reading of the said F.I.R would show that the entire negligence was on the rider/deceased. The claimant did not chose to examine the informant who lodged Ex.P.1-F.I.R. In this case, the Tribunal summoned the Police Inspector, who conducted investigation and obtained report from him, which was marked as Ex.C.1. The rough sketch is enclosed along with the said police report. A mere look at the said rough sketch would show that the two wheeler collided with the bus on the extreme wrong side of the road.

4.The appellant examined his driver as R.W.1. From a reading of the materials on record one can come to a conclusion that the version said out the F.I.R is true and probable. The deceased was riding the two wheeler from west to east and the JCP was going in front and probably to avoid it, while over taking the said JCP, the two wheeler had swerved to the extreme right.

5.However, if the bus driver who was coming in the opposite direction from east to west had been little alert, the accident could have been averted.

6. I, therefore, would fix 50% of the negligence on the bus driver and 50% of the negligence of the deceased. Since 50% negligence was fastened on the deceased, the claimants will be entitled to a sum of Rs.4,78,500/-.

7. The appellant/Transport Corporation is directed to deposit the award amount of Rs.4,78,500/- with interest at 7.5% per annum and costs, from the date of petition till 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 amount apportioned by the Tribunal, less the amount already withdrawn by them, if any, by filing proper application before the Tribunal.

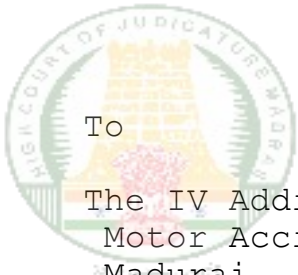
8.The learned counsel appearing for the appellant submits that the said compensation amount was already deposited, pursuant to the order dated 30.08.2016 passed by this Court. The claimants are at liberty to withdraw the balance amount.

9. Accordingly, the award dated 22.12.2015 made in M.C.O.P.No.236 of 2011 on the file of the Motor Accident Claims Tribunal, IV Additional District Judge, Madurai, is modified. This Civil Miscellaneous Appeal stands partly allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(RTI)

/True copy/



To

The IV Additional District Judge,
Motor Accident Claims Tribunal,
Madurai.

WEB COPY
Copy to

The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1cc to Mr.D.Sivaraman, Advocate, SR.No.93087.
+1cc to Mr.K.Kumaravel, Advocate, SR.No.92999.
+1cc to Mr.K.Sudalaiyandi, Advocate, SR.No.93007.

C.M.A. (MD) No.866 of 2016
14.12.2017

psd/kmi

RAM/PN/SAR 2/31.07.2018/3P/7C