



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.11.2017

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A. (MD) No.950 of 2016

M.Palanivel

... Appellant/Petitioner

Vs.

1.N.Govindan

2.M.Samuel

3.The General Manager,
Southern Railways,
Park Town, Chennai - 600 003.

4.The Divisional Railway Manager,
Madurai Division,
Southern Railways, Madurai.

... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1989, against the judgment and decree dated 05.01.2016 made in MCOP.No.1640 of 2005 on the file of the Motor Accidents Claims Tribunal, III Additional Sub Court, Trichirappalli.

For Appellant : Mr.AN.Ramanathan

For Respondents : Mr.A.Rajendran for R2
Mr.A.Ravi for R3&R4

No appearance for R1.

JUDGMENT

The injured claimant has filed this appeal challenging the impugned award principally on the ground that the liability ought to have been fixed on the railway administration.

2.The accident in question occurred on 05.02.2003. The claimant was travelling as passenger in Vaigai Express. When the train was crossing Vikravandi, a Tractor belonging to one Govindan had attempted to cross at a unmanned level crossing. There was a collision between the train and the said Tractor. In the resulting



accident, the Tractor driver died. The claimant herein who was travelling as a passenger and was probably standing near the entrance was thrown out. He suffered injuries. The disability suffered by him was assessed at 45%. The claimant took treatment at Jipmer Hospital. The claimant filed MCOP.1640 of 2005 before the Motor Accidents Claims Tribunal, III Additional Sub Court, Trichirappalli. The Tribunal awarded a sum of Rs.2,23,000/- with interest and directed the first respondent herein to satisfy the award.

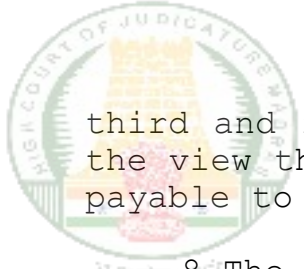
3.The Tribunal took the view that it has no power or jurisdiction to award damages by fastening liability on the railway administration. This is clearly incorrect. The learned counsel appearing for the claimant relied upon the the decision of the Hon'ble Supreme Court reported in 2002 ACJ 721 (*Union of India v. Bhagwati Prasad*). The Hon'ble Supreme Court specifically held that Claims Tribunal constituted under the Motor Vehicles Act will have jurisdiction to award compensation even against the railways if the accident involved collision between the train and motor vehicle at a railway level crossing.

4.In view of the aforesaid decision of the Hon'ble Supreme Court one must necessarily hold that the Tribunal does have jurisdiction to award compensation even against the railway administration. Now the question arises as to whether any liability can be fastened on the railway administration.

5.The learned counsel appearing for the appellant rightly pointed out that the railway administration did not choose to examine the concerned driver of the train Vaigai Express. He is the best person to speak about the occurrence. He was not examined. That apart, Sections 114 and 115 of the Railways Act, 1989 contemplate holding an enquiry by the Commissioner as soon as an accident arising out of this nature occurs. Be that as it may, in the present case, the results of the enquiry were not made known to the Tribunal.

6.Therefore, as per Section 114 of the Evidence Act, this Court can draw adverse inference against the railway administration. If the railway administration wanted to fix the entire negligence only on the driver of the Tractor, they would have adduced evidence before the Claims Tribunal. Since no such evidence was forthcoming, one can come to the conclusion that the driver of the train was also at fault. In the present case, the claimant was a passenger who travelled in the train. Therefore, it is the railways which must be fastened with the liability to satisfy the claim of the appellant herein.

7.The award dated 05.01.2016 made in MCOP.No.1640 of 2005 on the file of the Motor Accidents Claims Tribunal, III Additional Sub Court, Trichirappalli is modified fastening the liability on the



third and fourth respondent herein. As regards quantum, I am of the view that the Tribunal has correctly quantified the compensation payable to the claimant. It does not call for any interference.

8. The third and fourth respondents are directed to deposit the sum of Rs.2,23,000/- with interest at the rate of 7.5% per annum 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. On such deposit, the claimant is entitled to withdraw the same by filling proper application before the Tribunal.

9. This Civil Miscellaneous Appeal is allowed. No costs.

Sd/-

Assistant Registrar (W)

/True Copy/

Sub-Assistant Registrar

To

1. The III Additional Subordinate Judge,
The Motor Accidents Claims Tribunal,
Uthamapalayam.

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

+One cc to Mr.V.Karthikeyan, Advocate, SR.No.88736

+One cc to Mr.AN.Ramanathan, Advocate, SR.No.88394

SKM

RL/5C/3P/KK/SAR1/2/1/2018

C.M.A. (MD) No.950 of 2016

21.11.2017