



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.09.2017

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A.No.1048 of 2011

and

M.P. (MD)No.1 of 2011

The General Manager,
Tamilnadu State Transport Corporation,
Vannarpettai, Tirunelveli. ... Appellant/Respondent

Vs.

1.Mary Arul Jothi
2.Minor.Abiseik K.R.Selvin
3.Minor.Krishvin K.R.Jennies
4.Anthoniyammal ... Respondents/Petitioners

(Minors 2 & 3 are represented through their mother & 1st respondent herein)

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against common judgment and decree dated 24.01.2006 made in M.C.O.P.No.982 of 2005 on the file of the Motor Accident Claims Tribunal (Principal District Judge) at Tirunelveli.

For Appellant : Mr.R.Janakiramulu

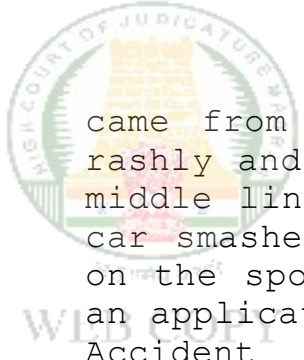
For R-1 : Mr.S.Xavier Rajini

For R-2, R-3 & R4 : No Appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Transport Corporation against the award, dated 24.01.2006 made in M.C.O.P.No.982 of 2005 by the Motor Accident Claims Tribunal (Principal District Judge) at Tirunelveli.

2.It is the case of the claimants that on 03.07.2005, the deceased was driving a Maruthi car 800 bearing registration No.TN 01 L 0650 from Nalatinputhur to Nagercoil. At about 2.45 p.m. when the car reaching near Moontradaippu in a small curve, a bus bearing registration No.TN 29 N 1099 belonging to the respondent



came from the opposite direction towards North in a high speed rashly and negligently and entered into the wrong side beyond the middle line and colluded with the car. As a result of which, the car smashed into pieces and the deceased, who drove the car died on the spot itself. Hence, the legal heirs of the deceased filed an application in M.C.O.P.No.982 of 2005, on the file of the Motor Accident Claims Tribunal (Principal District Judge) at Tirunelveli.

3.The case of the claimants was resisted by the respondent / Transport Corporation by filing a counter affidavit. According to the respondent, the driver had driven the bus carefully and due to the negligence of the deceased only, the accident had taken place and hence, the respondent is not liable to pay compensation. Hence, the respondent / Transport Corporation prayed for the dismissal of the claim petition.

4.Before the Tribunal on the side of the claimants as many as 50 documents were marked as Exs.P1 to P50 and P.W.1 to P.W.6 were examined as witnesses and on the side of the respondents, no document was marked and R.W.1 was examined as witness. After considering the oral and documentary evidence, the Tribunal directed the appellant / Transport Corporation to pay the compensation of Rs.7,80,000/- with 6% interest per annum. Against which, the present appeal is filed by the appellant / Transport Corporation.

5.The learned counsel for the appellant / Transport Corporation submitted that the learned Judge failed to see that accident took place only due to the negligence of the deceased. The learned Judge failed to consider the contributory negligence of the deceased. The learned Judge did not consider the evidence of the respondent properly and erroneously held that only due to rash and negligent driving of the driver of the bus, the accident occurred. He further contended that the finding of the Tribunal has to be set aside.

6.Per contra, the learned counsel for the respondents / claimants has made his submissions by supporting the award passed by the Tribunal and also argued that there were eight persons involved in the accident and eight MCOPs were filed and common order was passed and as against seven persons, no appeal was filed by the appellant and hence, it has become final and as against these claimants only, appeal has been filed.

7.Heard the learned counsel for the appellant / Transport Corporation and the learned counsel for the respondents / claimants and perused the records carefully.

8.According to the claimants, the accident occurred only due to negligent driving of the driver of the bus. To substantiate their case, the examined P.Ws.2 and 5, as eye witnesses to speak about the manner in which the accident occurred

and marked FIR given against the driver of the bus. The appellant has not disproved the evidence of P.Ws.2 and 5 that they were not eye witnesses and only interested witnesses.

9. In the circumstances, the conclusion of the learned Judge that the accident occurred only due to rash and negligent act of the driver of the bus, cannot be set aside. The learned Judge came to the conclusion only after appreciating all the materials on record in proper perspective. As far as quantum of compensation is concerned, the learned Judge has correctly arrived the compensation payable to the respondents. The compensation awarded is just compensation and not excessive. The appeal is devoid of merits and therefore, liable to be dismissed.

10. In the result, the award dated 24.01.2006 in M.C.O.P.No.982 of 2005 passed by the learned Principal District Judge, Motor Accident Claims Tribunal, Tirunelveli, is hereby confirmed and the Civil Miscellaneous Appeal is dismissed. Regarding the interest, the learned counsel for the respondents/claimants would submit that the claimants are entitled to 7.5% interest and hence, the same is enhanced to 7.5% from 6%. The appellant/Transport Corporation is directed to deposit the entire award amount with accrued interests and costs, within a period of eight weeks from the date of receipt of a copy of this order, if not already deposited and on such deposit being made, the respondent/claimant is permitted to withdraw the same with proportionate interests and costs, without filing any formal application before the Tribunal. No Costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To,

1. The Principal District Judge ,
The Motor Accident Claims Tribunal,
Tirunelveli.
2. The Record Keeper, Vernacular Section,
Madurai Bench of Madras High Court, Madurai.

+ 1 cc TO Mr.S.Xavier Rajini , Advocate in SR No. 77628

+ 1 cc TO Mr.R.Janakiramulu , Advocate in SR No. 77394

rj2

AE/KP/SAR3/09.10.2017/3P/5C