

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.09.2018

CORAM

THE HONOURABLE TMT.JUSTICE S.RAMATHILAGAM

CMA.No.2062 of 2005

The Managing Director,
Tamil Nadu State Transport Corporation,
Villupuram Division-I ltd.,
Vazhudareddypatty Post,
Villupuram - 605 602 Appellant /3rd Respondent

Versus

1.Natarajan ... Respondent/Claimant
2.K.Murugesan
Set Ex-Parte before Tribunal
3.National Insurance Company Ltd.,
Thanthaiperiyar Market Complex,
Salem - 1 Respondents 2 & 3/
Respondents 1 & 2

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the award dated 13.03.2003 made in M.C.O.P.No.114 of 1998 on the file of the Motor Accident Claims Tribunal (Additional District Judge-cum-Chief Judicial Magistrate), Villupuram.

For Appellant : Mr.S.V.Vasanthakumar

For Respondents: Mr.N.Ananda Babu Rao
for Mr.D.Baskar

JUDGMENT

This Civil Miscellaneous Appeal is directed against the Judgment and Decree dated 13.03.2003 made in M.C.O.P.No.114 of 1998 on the file of the Motor Accident Claims Tribunal (Additional District Judge-cum-Chief Judicial Magistrate), Villupuram.

2. The brief facts of the case are as follows:-

On 18.05.1993 at about 4.45 a.m., the claimant was travelling in a bus belonging to the third respondent/Corporation bearing Registration No.TN-32-N-0011,

when the bus was nearing Sembiyamadevi, a lorry belonging to the first respondent bearing Registration No.TAL 9891, driven by its driver in a rash and negligent manner, hit against the bus, as a result, the claimant sustained severe injuries. The claimant has claimed a sum of Rs.30,000/- as compensation.

3. The second respondent, in the counter statement, has denied the negligence on the part of the driver of the lorry and it is stated that the bus, which was driven by its driver in a rash and negligent manner, caused the accident. It is further stated that, at the time of accident, the lorry was not insured with the second respondent/Insurance Company and the driver had no valid license. Further, the age, income, occupation and claim made by the claimant was also denied by the second respondent.

4. The third respondent/Managing Director, Thanthai Periyar Transport Corporation, has contended that there is no negligence on the part of the bus, since, the rash and negligence driving on the part of the driver of the lorry, which came in the opposite direction was noted by the driver of the bus and he stopped the bus at the same place. Inspite of the same, the lorry hit against the bus and the driver of the bus also died on the spot and the case was registered against the driver of the lorry. Hence, it is stated that the third respondent is unnecessary party and other contentions were also denied.

5. The Tribunal, after analyzing the evidence and documents placed before it, including the Accident Register, has given a finding that the two vehicles had head on collision and the witnesses examined before the Tribunal have also deposed the same. The conductor of the said bus, namely Veerasamy examined as P.W.1 before the Tribunal, has stated that the bus was not stopped in the same place and the accident had occurred only due to the rash and negligent driving of the lorry driver alone. He had further deposed that the driver of the bus after seeing the lorry coming in the opposite direction in a rash and negligent manner, reduced the speed of the bus and drove very slowly on the left side of the road to avoid the accident. Inspite of the same, the lorry hit against the bus. Hence, from the evidence, witnesses and FIR, the Tribunal has come to the conclusion that, the accident occurred only due to the negligence driving by the driver of the lorry and at the time of accident, there was no other vehicle in the road. Even as per the evidence and the witnesses, if the lorry was parked on the left side of the road, the accident would have been averted. Hence, the Tribunal has fixed the liability on the driver of the lorry and the Insurance Company at 75% and negligence on the part of the driver of the bus at 25%. Aggrieved against the same, the Managing Director, Thanthai Periyar Transport Corporation has preferred this appeal.

6. Heard both sides.

7. On a perusal of the records, it is seen that the driver of the lorry was driving in a rash and negligent manner and that the driver of the bus also died on the spot itself. It is very much clear that the rash and negligence on the part of the driver of the lorry has caused the accident. Since, none of the witness deposed that the bus was parked to avoid accident, on the evidence and documents placed before the Tribunal, the liability fixed on the transport corporation at 25% as per FIR is quite reasonable. The compensation awarded by the Tribunal under the various heads is as follows :

Heads	Amount awarded by the Tribunal (Rs.)
For Pain and Suffering	5,000.00
For Nourishment	2,000.00
For injuries	18,000.00
For Disability	5,000.00
Total Compensation	30,000.00

8. As the findings given by the Tribunal were based on the evidence and documents, the sum awarded by the Tribunal is just and proper. This Court is unable to see any reason to interfere with the findings of the Tribunal in this appeal.

9. In view of the above, the award passed by the Tribunal in MCOP.No. 114 of 1998 is confirmed. This Civil Miscellaneous Appeal is dismissed. No costs.

10. Accordingly, the appellant and the 2nd and 3rd respondents are directed to deposit the award amount as apportioned by the Tribunal, with interest and costs, before the Tribunal, after adjusting the amount, if any, already deposited, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer the same to the claimant's bank account through RTGS within one week thereon.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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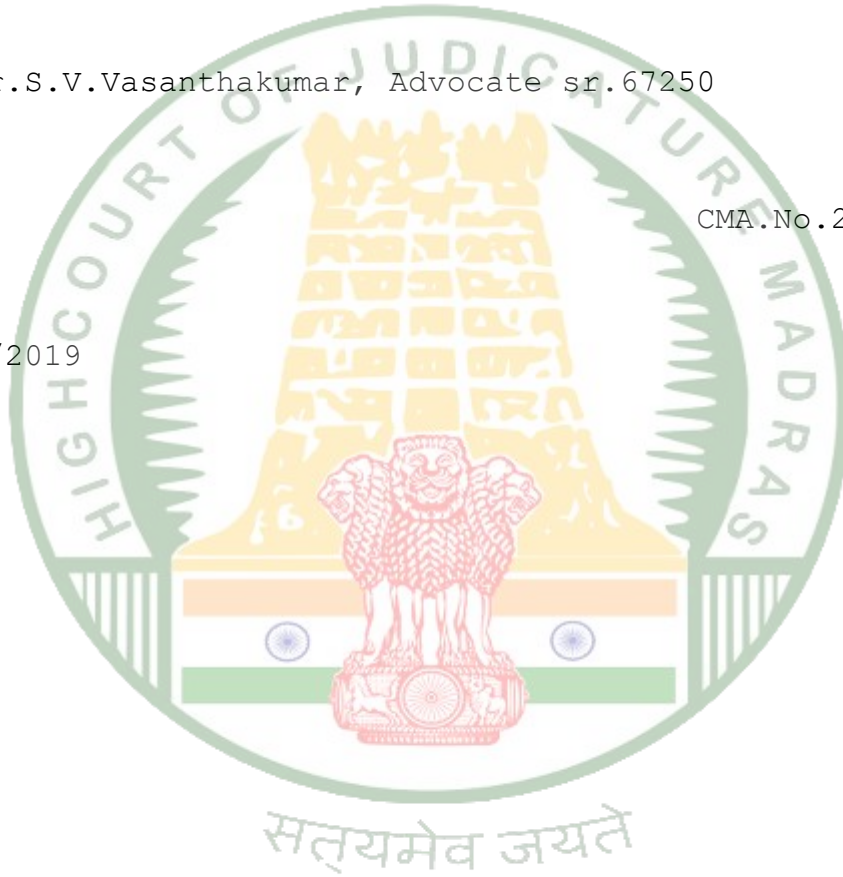
To

1. The Motor Accident Claims Tribunal,
(Additional District Judge-cum-Chief Judicial Magistrate),
Villupuram.
2. The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.S.V.Vasanthakumar, Advocate sr.67250

CMA.No.2062 of 2005

rsv[col]
srg 28/01/2019



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