

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 27.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.1462 of 2008

M.P.No.1 of 2008

The Managing Director,
Bangalore Metropolitan Transport Corporation
Bangalore - 560 027.

...Appellant/3rd Respondent

Vs

1.Smt.Jyothi

2.Mr.Kariyan

3.Mrs.Kamala

4.Mr.Prabhakaran

5.Mrs.Sudhasini

6.Minor Sudhakar

7.Minor Suvitha

...Respondent 1 to 7 Claimants

(6 and 7 rep. by their Next Friend/Mother Smt.Jyothi)

8.M/s.Gel Alstham India Ltd.,

rep by its Manager,

at No.1106/9, A.M.Industrial Estate,

Thomile, Hosur Road, Bangalore.

9.The Branch Manager,

National Insurance Company Ltd.,

Bangalore Divn-111

No.15, 17-19, 1st Floor,

Sri.Lakshmi Complex, सत्यमेव जयते

Sainik Marg,

Bangalore - 1.

... Respondents 8&9/Respondents 1&2

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the award, judgment and decree dated 27/04/2007 in M.C.O.P.No.397 of 2003 on the file of the Motor Accident Claims Tribunal, Sub Court, Thirupathur.

For Appellant : Mr.T.Thiyagarajan

For respondents: Mr.D.Selvaraju for R1, R3 to R7

Not ready in notice reg. R2 & R8

Mr.J.Chandran for R9

JUDGMENT

The instant appeal has been filed by the Transport Corporation challenging the findings of the Motor Accidents Claims Tribunal, Sub Court, Thirupathur in its Award dated 27.04.2007, in MCOP.No.397 of 2003, wherein the Tribunal has awarded a total compensation of Rs.5,75,000/- to the respondent Nos.1 to 7 and has given a finding that the bus owned by the Appellant Transport Corporation as well as the car insured with the ninth respondent are both at fault and has directed the Appellant as well as the ninth respondent to pay the total compensation of Rs.5,75,000/- together with interest at 7.5% per annum from the date of claim till the date of realization in the ratio of 50:50.

2.The brief facts leading to the filing of the instant appeal are as follows:

(i)One M.G.Mani while he was riding a two wheeler met with an accident which resulted in his death due to the rash and negligent driving by the driver of the car insured with the ninth respondent, which was coming in the opposite direction and a bus, which was coming in the rear side of the two wheeler. The car bearing Registration No.KA 03 N 7886 is insured with the ninth respondent and the bus is owned by the Appellant. The dependents of the deceased M.G.Mani are the respondent Nos.1 to 7 in this appeal.

(ii)They preferred a claim before the Motor Accident Claims Tribunal in MCOP.No.397 of 2003 against the respective owners of the bus as well as the car and the Insurance Company namely, the ninth respondent in this appeal.

(iii)The Motor Accident Claims Tribunal by its Award dated 27.04.2007, in MCOP.No.397 of 2003, directed the Appellant as well as the ninth respondent to pay the total compensation of Rs.5,75,000/- together with interest at 7.5% per annum from the date of claim till the date of realization to the respondent Nos.1 to 7 in the ratio of 50:50. Under the impugned Award, contributory negligence has been attributed on the part of the Appellant who is the owner of the bus and the Appellant who is the insurer of the car.

3.Aggrieved by the findings of the Tribunal attributing contributory negligence on the part of the Appellant, the instant appeal has been filed.

4.Heard, Mr.T.Thiyagarajan, learned Counsel for the Appellant, Mr.D.Selvaraju, learned Counsel for the respondent Nos.1 to 7 and Mr.J.Chandran, learned Counsel for the ninth respondent.

5.According to the learned Counsel for the Appellant, the accident happened only due to the rash and negligent driving by the driver of the car insured with the ninth respondent. According to him, the deceased was riding a motor cycle and a car insured with the ninth respondent was coming in the opposite direction collided with the motor cycle and the deceased was over thrown from the motor cycle and the bus owned by the Appellant Transport Corporation which was coming on the rear side was unable to apply the sudden brake was forced to run over the deceased which resulted in his death.

6.Therefore, according to him, M.G.Mani, the rider of the motor cycle died only due to the rash and negligent driving by the driver of the car insured with the ninth respondent. Therefore, according to him, there is no contributory negligence on the part of the Appellant, which resulted in the death of M.G.Mani.

7.Per contra, the learned Counsel for the ninth respondent drew the attention of this Court to the findings of the Tribunal under the impugned Award. According to him, before the Tribunal, the son of the deceased who was the pillion rider in the motor cycle has deposed that the bus which was coming from the rear side due to its over speeding ran over the head of M.G.Mani which resulted in his spontaneous death.

8.The learned Counsel for the ninth respondent would also submit that FIR was registered against the Appellant as well as the driver of the car insured with the ninth respondent.

9.This Court after having considered the materials available on record and after examining the impugned Award and after hearing the submissions of the respective Counsels observes the following:

(a)It is an undisputed fact that both the vehicles namely, the car insured with the ninth respondent as well as the bus owned by the Appellant Transport Corporation were involved in the accident.

(b)FIR was also registered against both the vehicles namely the bus as well as the car.

(c)An eyewitness to the accident namely the pillion rider of the two wheeler who is PW-2 has deposed that due to its over speeding, the bus owned by the Appellant Transport Corporation ran over the head of the deceased which resulted in his spontaneous death. No contra evidence has been produced by the Appellant Transport Corporation to disprove the said statement made by PW-2 before the Tribunal.

(d)The ninth respondent has also not preferred any appeal against the findings of the Tribunal.

(e)The quantum of compensation awarded by the Tribunal to the respondent Nos.1 to 7 has not been disputed by the Appellant or by the ninth respondent.

8.In the light of the above observations, this Court is of the considered view that the Tribunal has rightly apportioned the liability between the Appellant and the ninth respondent under the impugned Award.

9.In the result, there is no merit in the instant appeal. Accordingly, the appeal shall stand dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed. The Appellant and the ninth respondent are directed to deposit the amount awarded by the Tribunal together with interest at 7.5% per annum from the date of claim till the date of realization in the ratio of 50:50 as per the apportionment made by the Tribunal, after deducting the amount already deposited, if any, to the credit of MCOP.No.397 of 2003, on the file of the Motor Accident Claims Tribunal, Sub Court, Thirupathur, within a period of four weeks from the date of receipt of copy of this order. On such deposit being made, the respondent Nos.1 to 5 are permitted to withdraw the said sum by filing an appropriate application. Insofar as the minor respondent Nos.6 and 7 are concerned, their respective shares shall be deposited in any one of the Nationalised Banks till they attain majority and the 1st respondent/mother of the minors is permitted to withdraw the interest accrued once in six months.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1.The Motor Accidents Claims Tribunal, Sub Judge, Thirupathur.

+1cc to Mr.T.Thiyagarajan, Advocate, S.R.No.67319

+1cc to Mr.D.Selvaraju, Advocate, S.R.No.67549

+1cc to Mr.J.Chandran, Advocate, S.R.No.67872

C.M.A.No.1462 of 2008
and M.P.No.1 of 2008

GSP(12/11/2018)



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