

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01.11.2018

CORAM

THE HONOURABLE Mrs.JUSTICE S.RAMATHILAGAM

CMA.No.267 of 2005
and
CMP.No.1343 of 2005

The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Erode. ... Appellant/Respondent

Versus

1.Gowri Shankar

2.Sheela Devi

... Respondents/Petitioner

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the award and decreetal order dated 01.09.2004 on the file of Motor Accident Claims Tribunal (Additional District Court, Fast Track Court No.V, Coimbatore at Tiruppur) and made in MCOP.No.1414 of 2002 to set aside the same.

For Appellant : Mr.S.V.Vasantha Kumar

J U D G M E N T

The Civil Miscellaneous Appeal has been preferred against the judgment and award passed in MCOP.No.1414 of 2002 dated 01.09.2004 on the file of Motor Accident Claims Tribunal (Additional District Court, Fast Track Court No.V, Coimbatore at Tiruppur).

2.The brief facts in the claim application are as follows:-

On 14.07.2002, at about 8.30 hours, the deceased Kutti Kumari was walking in NH 47 Main Road, Vellandipalayam Pirivu, Thekkalur by keeping left side of the road. At that time, the respondent bus bearing Registration No.TN-33-N-1328 which was coming from south to north direction in a rash and negligent manner dashed against the deceased and deceased sustained severe and grievous injuries all over the body, in spite of the treatment, she could not be saved. The claimants are the Lrs of the deceased, claimed a sum of Rs.5,00,000/- as compensation.

3.The respondent in the counter statement denied the accident and also rash and negligent driving on the part of the driver of the bus. It is stated that the driver of the said bus was driving slowly with caution and at that time, a six year old girl suddenly crossed the road, in spite of the effort taken, the girl got hit against the left side corner of the bus, hence, there is no rash and negligent driving on the part of the driver and it is because of her negligent act, the accident had occurred. The sum claimed by the claimants at Rs.5,00,000/- was also very much denied as excessive.

4.The Tribunal after analyzing the evidence and documents placed before the same, has given a finding that the accident occurred only due to rash and negligent driving on the part of the driver of the Transport bus and awarded a sum of Rs.1,73,000/- as compensation to the deceased who was six years at the time of the accident. Aggrieved against the judgment and award, the respondent Transport Corporation has preferred this appeal.

5.In the grounds of appeal it has been stated that the Tribunal has committed an error by relying on the evidence of P.W.2. The Tribunal has also not examined any police officer to prove the negligence on the part of the Transport Corporation bus. It is further stated that the Tribunal ought to have given a finding to some extent regarding the contributory negligence, the age of the deceased fixed by the Tribunal is not based on any evidence and the sum arrived by the Tribunal for assessing the loss is not proper. Hence, on the whole, the compensation awarded is very much on the higher side.

6.On the side of the appellant, it is argued that the deceased was only six years old at the time of accident and there is no rash and negligent driving on the part of the driver. When the deceased was crossing the road, the driver of the said bus also tried to stop the bus but, the deceased got hit at the corner side of the bus and sustained severe injury and there is no rash and negligent driving on the part of the driver of the bus.

7.On perusal of the records, it is observed that P.W.1 who was eye witness, examined before the Tribunal. He has stated that the deceased was walking in the middle of the road and at that time, the bus bearing registration No. TN-33-N-1328, belonged to the first respondent driven by its driver in a rash and negligent manner, dashed against the girl and caused the accident. P.W.2 has also deposed to the effect that it is the rash and negligent driving on the part of the driver of the bus, which resulted in the accident. FIR was also registered against

the driver of the bus. Hence, it is clearly proved before the Tribunal that accident occurred only due to rash and negligent driving on the part of the driver of the bus and there is no negligence on the part of the deceased who was walking on the middle road.

8. With regard to the ground raised by the appellant, regarding compensation awarded by the Tribunal, it is seen that the Tribunal has rightly assessed the compensation by considering the age of the deceased who was six years and mental agony to the parents, who lost their child, who are eagerly waiting for the welfare of the child, have lost the precious child at very young age. The Tribunal has also discussed the case regarding the death of child and how the loss to be assessed and also the points that have to be taken care while assessing the compensation. For the loss to the parents, the Tribunal has assessed a sum of Rs.10,000/- which is not on the higher side. The annual income at Rs.15,000/- and by applying multiplier method, the Tribunal has calculated a sum of Rs.1,50,000/-, for loss of income, the sum awarded at Rs.20,000/- for love and affection and Rs.3,000/- for funeral expenses, which this Court finds proper and does not require any interference. Hence the total sum arrived at Rs.1,73,000/- by the Tribunal, by considering the above facts it is very much reasonable and proper.

9. In view of the above, this Court concurs with the findings of the Tribunal, there is no discrepancy in the award and decree. Hence, this Court is not willing to interfere with the judgment of compensation as awarded by the Tribunal.

10. In the result, the civil miscellaneous appeal is dismissed. No costs.

11. Accordingly, the appellant/Transport Corporation is directed to deposit the entire award amount along with interest as apportioned by the Tribunal within a period of four weeks from the date of receipt of a copy of this order, if not, already paid.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

AT

To

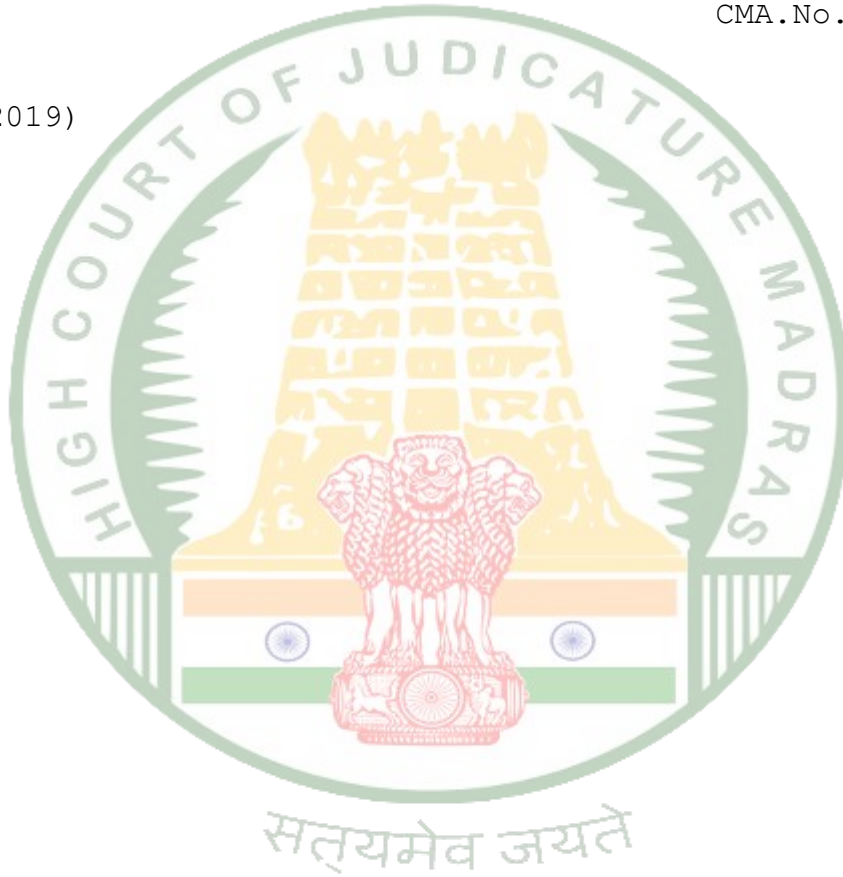
1. The Motor Accident Claims Tribunal
(Additional District Court,
Fast Track Court No.V, Coimbatore at Tiruppur)

Copy to

The Section Officer,
V.R.Section,
High Court, Madras.

CMA.No.267 of 2005

GP(CO)
SP(14/10/2019)



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