

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **04.10.2018**

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.1622 of 2008
and M.P.No.1 of 2008

The Managing Director
Tamilnadu State Transport Corporation Ltd.,
(CBE Division -2 Ltd.,)
Chennimalai road, Erode.

...Appellant

Vs

1.A.Kannan

2.P.Selvaraj

3.United India Insurance Co Ltd.,
Post Box No.34, C.G.Complex,
No.139, Kumaran Road,
Thirupur.

4.Punitha

5.Kannammal

6.Minor Ilackiya
(Respondents 4 to 6 given up)

...Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the decree and judgment dated 13-07-2007, made in M.C.O.P.No.765 of 2004 on the file of the Motor Accident Claims Tribunal, Principal Subordinate Judge of Erode.

For Appellant : Mr.S.V.Vasanthakumar

For Respondents : R1 & R2 not ready in Notice
Mr.J.Chandran for R3
R4 to R6 given up

JUDGMENT

The instant appeal has been filed by the Transport Corporation questioning its liability under the impugned Award dated 13.07.2007, passed by the Motor Accident Claims Tribunal, Principal Subordinate Judge, Erode in M.C.O.P.No.765 of 2004.

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

(i)The first respondent sustained injuries on 27.10.2003 as a result of an accident caused by a bus bearing Registration No.TN-33-N-1311 and a Maruthi van bearing Registration No.TN-45-B-6838. The bus is owned by the Appellant Transport Corporation and the Maruthi van is insured with the third respondent Insurance Company.

(ii)The first respondent preferred a claim before the Motor Accident Claims Tribunal in M.C.O.P.No.765 of 2004, seeking a compensation of Rs.10,00,000/-.

(iii) The Motor Accident Claims Tribunal, by its Award, dated 13.07.2007, passed in M.C.O.P.No.765 of 2004, attributed contributory

negligence on the part of the driver of the bus as well as the driver of the van and apportioned the liability between them in the ratio of 50:50. The total compensation awarded by the Tribunal to the first respondent under the impugned Award is Rs.4,49,890/-.

3. Aggrieved by the Award dated 13.07.2007, passed in M.C.O.P.No.765 of 2004, the instant appeal has been filed by the Appellant Transport Corporation.

4. Heard, Mr.S.V.Vasanthakumar, learned Counsel for the Appellant and Mr.J.Chandran, learned Counsel for the third respondent. Till date, notice has not been served on the remaining respondents in this appeal. Since the appeal pertains to the year 2008 and this Court is going to confirm the Award, there is no necessity to serve the notice on the remaining respondents.

5. According to the learned Counsel for the Appellant, the Tribunal under the impugned Award has erroneously attributed contributory negligence on the part of the driver of the bus and according to him, only the Maruthi van insured with the third respondent is solely responsible for the accident.

6.Per contra, learned Counsel for the third respondent Insurance Company would submit that the third respondent has not filed any appeal against the impugned Award and they have also deposited the apportioned Award amount before the Tribunal and the same has already been withdrawn by the claimants before the Tribunal.

7.This Court has examined the Award. The Tribunal has given a categorical finding that only due to the rash and negligent driving by the driver of the bus owned by the Appellant Transport Corporation as well as by the driver of the Maruthi van insured with the third respondent Insurance Company, the accident had happened. The FIR was also registered only against the driver of the bus owned by the Appellant Transport Corporation. No contra evidence has been produced by the Appellant before the Tribunal to disprove the statement contained in the FIR as well as the deposition made by the witnesses on the side of the claimants that only due to the rash and negligent driving by the driver of the bus, the accident had happened.

8.As a result of the accident, all the remaining occupants of the Maruthi van have died. Considering the age of the first respondent/claimant, year of the accident and his avocation, the

quantum of compensation awarded by the Tribunal is a just compensation in the considered view of this Court. Further, the third respondent has not preferred any appeal against the findings of the Tribunal attributing 50% contributory negligence on their part and the said finding has already become final.

9. In the light of the above observations, this Court is of the considered view that there is no merit in the instant appeal. Accordingly, the civil miscellaneous appeal is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

04.10.2018

vkp/pam

Index : Yes/No

Internet : Yes/No

Speaking /Non-speaking order

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ABDUL QUDDHOSE, J.

vkr/pam

To

- 1.The Motor Accident Claims Tribunal,
Principal Subordinate Judge, Erode.
- 2.The Section Officer, VR Section,
Madras High Court.



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