

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 02.11.2018

CORAM:

THE HONOURABLE Tmt. JUSTICE S. RAMATHILAGAM

C.M.A.No.3237 of 2006

and

C.M.P.No.10314 of 2006

The Managing Director,
Metropolitan Transport Corporation Ltd.,
Ayyanavaram, Chennai - 23. ...Appellant / Respondent

(Cause title accepted vide Order
of this Court 15.06.2006 in
CMP.No.7496/2006)

Versus

Viyakulamarry ...Respondent / Petitioner

Prayer : Civil Miscellaneous Appeal filed under Sections 173 of
Motor Vehicles Act, 1988 against the Judgment and Decree dated
30.04.2003 passed in M.C.O.P.No.263 of 1995 on the file of the
Motor Accident Claims Tribunal, (Additional District Sessions
Judge, Fast Track Court No.3) at Poonamallee.

For Appellant : Mr. M.Krishnamoorthy

For Respondent : No Appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the
Judgment and Decree dated 30.04.2003 passed in M.C.O.P.No.263 of
1995 on the file of the Motor Accident Claims Tribunal,
(Additional District Sessions Judge, Fast Track Court No.III) at
Poonamallee.

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

On 12.01.1995 at about 19.20 hours, the deceased was
travelling as a passenger in the respondent/Transport
Corporation bus bearing Reg. No.TN 01 N 1072 and when the said
bus was stopped in the Shaw Wallace Co. bus stop, the deceased
was trying to get down from the front door of the bus and at
that time, the driver started the bus suddenly due to which the

deceased fell down from the bus and sustained injuries and died. The legal heirs of the deceased have claimed a sum of Rs.4,25,000/- as compensation.

3. The appellant/Transport Corporation, in the counter statement, has denied the accident and stated that the deceased who tried to get down the moving bus through the front foot board, lost his balance and fell down in the road and sustained injuries. Hence, there is no rash and negligent driving on the part of the driver of the bus. The appellant/Transport Corporation has stated that the sum claimed under various heads are very excessive, without any documents, hence, the claim application has to be dismissed.

4. The Tribunal, after analyzing the evidence and documents placed before it, has given a finding that it is the rash and negligent driving on the part of the respondent bus, resulted in the accident. The Tribunal has also verified the age, income and occupation of the deceased and awarded a sum of Rs.4,03,000/- as compensation.

Aggrieved against the said award, the appeal has been preferred by the Managing Director, Transport Corporation.

5. In the grounds of appeal, the appellant/Transport Corporation has stated that the Tribunal ought to have rejected the evidence of P.W.2, who was not an eye witness to the accident and there is no documentary evidence. The tribunal has also committed an error is not considering the evidence of RW.1, who very much spoken about the mode of accident and also Ex.P1 the F.I.R, which reveals the fact that the negligence is on the part of the deceased. It is further stated that the deceased had contributed to the accident in a running bus, hence, the claim application allowed by the tribunal is not justified. Further the sum awarded the tribunal at Rs.4,03,000/- is on the higher side and the evidence and documents placed before the tribunal have not properly considered and sum awarded is also on the higher side.

6. The appellant has argued that the deceased who was trying to board in the moving bus had invited the accident and the Tribunal ought to have decided the issue, by concluding that the deceased himself invited the accident due to his carelessness and negligence by trying to get into the moving bus and invited the accident. In respect of evidence of RW1 and contents of the FIR, the tribunal has fixed the liability on the driver of the bus, which is not justified and the evidence of PW2 cannot be relied upon the eyewitness.

7. On a perusal of evidence and documents, it is observed that PW2 was examined as eyewitness he was clearly deposed that when the bus was stopped at Avadi bus stop passengers were trying to get down from the bus and simultaneously some passengers were getting into the bus. The Conductor of the bus without noticing the passengers, gave whistle, on hearing the whistle sound, the driver started moving the bus. He has also deposed that due to the carelessness on the part of the conductor and driver, one among the passengers who was trying to get down from the bus in the first foot board, had slipped and fell down on the road. Immediately he was taken to the hospital.

8. The Tribunal has observed that if the driver of the bus had confirmed himself before starting the bus that all the passengers are get into the bus and get down from the bus, the accident would have very much avoided, hence the argument of the appellant that deceased had slipped and fell down while trying to get into the moving bus is not considered. The driver of the bus who was negligent in his driving is responsible for the accident.

9. On a perusal of evidence and documents, it is observed that contradictory evidence, has been placed on the side of the claimant and RW. The respondent/claimant has denied the arguments of the appellant that the deceased has contributed the accident. Since the arguments of the appellant is not based on the evidence or fact, the findings of the tribunal has to be confirmed.

10. While determination of compensation, it is observed that at the time of accident the deceased was working as Junior Assistant in Tamil Nadu Special Police, Avadi and earning a sum of Rs.3,152/- per month and his age was also mentioned as 40 years.

11. It is argued on the side of the appellant that since the postmortem certificate was not placed before the Tribunal, the death of the deceased should not be thought of as a result of injuries in the accident. On a perusal of evidence of PW1, it is observed that the deceased had sustained injuries all over the body and he was admitted in KMC Hospital, Chennai on 12.01.1995 and he was discharged on 23.01.1995 and he was also sustained serious injuries on his head apart from fracture injury in the right hand and even, after taking treatment as out patient on 12.02.1995 i.e. one month after the accident he died in his house. It can be very well seen that from the date of accident, till date of death, he was under treatment. Hence, the argument of the appellant that the death of the deceased is not accidental, in view of non-filling of postmortem certificate is not accepted. Therefore the findings of the tribunal that the

deceased died due to the said injuries is very much proper and based on the documents and evidence. On the side of the claimants Ex.P4 Salary Certificate was also placed before the tribunal. Considering the age of the deceased and also his occupation as Junior Assistant in Tamilnadu Special Police, Avadi. The tribunal assessed the loss of income by applying proper multiplier of Rs.4,03,456/- which is very much reasonable and proper and does not require any modification.

12. Accordingly, this Civil Miscellaneous Appeal is dismissed. No cost. Consequently, the connected Miscellaneous Petition is also closed.

13. The appellant/Transport Corporation is directed to deposit the entire award amount passed 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 claimants bank account through RTGS within one week thereon.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

pds/lpp

To

1. The Motor Accident Claims Tribunal,
(Additional District Sessions Judge,
Fast Track Court No.III)
Poonamallee.

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

+1 cc to Mr.M.Krishnamoorthy, Advocate, S.R.No.75849

C.M.A.No.3237 of 2006
and

C.M.P.No.10314 of 2006

SS (CO)
SSM(20/09/2019)