

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.10.2018

CORAM

THE HONOURABLE TMT. JUSTICE S. RAMATHILAGAM

C.M.A.No.377 of 2007 and
M.P.No.2 of 2007

The Managing Director,
State Express Transport,
Corporation, Division - I Ltd.,
Pallavan Salai,
Chennai - 2. Appellant/2nd Respondent

Vs.

1.Purusothaman
2.Raniammal ... Respondents 1 & 2/Petitioner/Claimants
3.Mr.Mohamed Abubekkar3rd Respondent/3rd Respondent
4.M/s.The New India Assurance Company Ltd.,
171 Thambu Chetty Street,
2nd Floor, Chennai - 1.4th Respondent/4th Respondent
5.Duraipandian5th Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988 against the Judgement and Decree dated 28.02.2005 made in M.C.O.P.No.93/2003 on the file of the Motor Accidents Claims Tribunal, Sub-Court, Madurantakam and praying to set aside the same.

For Petitioner : No Appearance

For Respondents : Mr.K.Govi Ganesan for R1 & R2
Mr.J.Chandran for R4

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JUDGMENT

This Civil Miscellaneous Appeal has been preferred against the judgment and award passed in MCOP. No. 93 of 2003 dated 28.02.2005 by the Motor Accidents Claims Tribunal, Sub Court, Madurantakam.

The brief facts leading to the claim petition are as follows;

2. On 17.05.2003 at about 22 hrs, when the deceased Maruthi @ Ethiraj. was traveling in a Mahendra Van, bearing registration No. TN 22 T 8370 near Thozhupedu Check post, at that time, the 2nd respondent bus bearing registration no. TN01 N 6392, driven by the first respondent in a rash and negligent manner, which came in the opposite direction, hit against the Mahindra Van and caused death to Maruthi @ Ethiraj and other persons who traveled in the said van sustained greivous injuries. The claim for Rs.7,00,000/- was made towards compensation for the death of Maruthi @ Ethiraj.

3. The second respondent in the counter statement has admitted certain portions of the averments made in the claim petition and denied the averments made by the 2nd respondent in respect of age, occupation, monthly income of the deceased. It is further stated that, the said Mahindra Van came in the opposite direction with an uncontrollable speed and dashed against the respondent's bus at the front right corner. The fourth respondent/insurance company denied the rash and negligent driving on the part of the bus driver by stating that the claim made by the claimant is excessive.

4. The tribunal after analysing the evidence and documents placed before the same, has given findings that, it is the driver of the bus, who driven the bus in a rash and negligent manner had caused the accident, hence the tribunal awarded a sum of Rs.7,00,000/- as compensation to the claimants.

5. Aggrieved against the said judgment, the 2nd respondent/appellant herein has preferred this appeal.

6. In the grounds of appeal, the appellant has stated that it is the negligence on the part of the driver of the Mahindra Van and the said van belonged to the 3rd respondent, who had driven in a rash and negligent manner and hit against the appellant Transportation Corporation bus. The finding of the tribunal is also stated as not proper, when the fact that the the van driver was not forced to carry passenger and came in a rash and negligent manner and the complaint also preferred by the driver of the bus accusing the driver of the van. The other grievance raised in the appeal is that the evidence RW1 was not properly considered by the tribunal. Hence, the contrary finding given y the tribunal is perverse and not sustainable. Apart from that, the sum awarded by the tribunal for Rs.7,00,000.- by taking into consideration the income of the deceased at Rs.6,000/- per month and applying the multiplier 15

by considering the age of the deceased at 50, hence the 2nd respondent has preferred this appeal on the finding of the tribunal on the aspect of liability and also the quantum.

7. No representation for the appellant. The learned counsel for the respondents 1 & 2 and the learned counsel for the 4th respondent are present.

8. On a perusal of records, it is observed that immediately after the accident, the complaint was preferred by the driver of the van, in which he has stated that it is the driver of the Transport Corporation, who had driven the vehicle in a rash and negligent manner and hit against the same. It is also observed that exhibit P4 is the charge sheet, which was framed based on the facts mentioned in the FIR regarding the accident. PW2 Arokyadas was examined as an eye witness before the Tribunal. He had deposed before the tribunal that while he was proceeding in his cycle on 17.05.2003 at 10.00.p.m near Thozupedu Check post, the Transport Corporation bus and the Mahindra Van had a head on collision and due to the said collision, two passengers traveled in the Mahindra Van died and he had further deposed that it is the negligence on the part of the driver of the Transport bus. Hence, the findings of the Tribunal fixing the liability on the driver of the bus based on the documents and evidence is very much justified.

9. Now coming to the quantum, which aspect also very much aggrieved by the appellant. On perusal of the particulars furnished in the claim application, it is observed that at the time of accident, the deceased was aged 30 years and he was working as Marketing Manager in G.K.Labs Establishment. Exhibit P6 is a salary certificate which shows the income of the deceased. From the document exhibit P7, the Transfer Certificate, the age of the deceased was mentioned as 33. Further on perusal of the pay details by exhibit P7, the Tribunal has taken the monthly income at Rs.6,000/- and deducted the 1/3 of the annual income towards his personal expenses. The tribunal has also considered the fact that the deceased was unmarried and the claimants are the parents of the deceased, who are aged about 58 & 50 years respectively. Hence, the tribunal has taken a view that the claimant can live another more 15 years and accordingly, multiplied the annual income after deducting 1/3 of the income for his personal expenses and arrived the compensation at Rs.7,00,000/-.

10. Hence, the loss of income determined by the tribunal based on the documents is quite reasonable and need not be interfered with and the finding of the tribunal does not require

any interference and accordingly, the appeal is dismissed. No Costs. The connected Miscellaneous Petition is closed.

11. It is represented by the respondent that the appellant / Insurance Company has deposited Rs. 5,00,000/-. Hence, this Court directs the Appellant/ Transport Corporation to deposit the remaining 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. On such deposit is being made, the Tribunal is directed to transfer the same to the respective claimants to their bank accounts through RTGS within one week thereon.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

ak/mbi

To

The Motor Accidents Claims Tribunal,
Sub-Court, Madurantakam.

Copy to

The Section Officer,
VR Section, High Court, Madras.

+1cc to M/S.K.GoviGanesan, Advocate sr.70813

+1cc to M/S.J.Chandran, Advocate Sr.71212

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