



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.2062 of 2010

The Managing Director,
Tamilnadu State Transport Corporation Ltd.,
Erode Division,
Chennimalai Road,
Erode.

... Appellant/2nd Respondent

Vs

1.Indrani

2.M.Sumathi

3.S.Baby

4.S.Prakash

5.Ramasamy Naidu ...1 to 5 Respondents/1 to 5 Petitioners

6.R.Palanisamy (Given up) ...6th Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Decree and Judgment in M.A.C.T.O.P.No.251 of 2007 dated 06.02.2009 passed by the Motor Accident Claims Tribunal (II Additional Subordinate Court), Erode.

For Appellant : Mr.M.S.Prem Kumar
for Mr.N.Anand

For Respondents: Mr.J.Prithivi for R1 to R5
for Mr.S.Kaithamalai Kumaran

J U D G M E N T

The instant appeal has been filed by the Transport Corporation challenging the Award dated 06.02.2009, passed by the Motor Accident Claims Tribunal (II Additional Subordinate Court), Erode in M.A.C.T.O.P.No.251 of 2007.



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

(i)One Subramani died on 16.02.2007 as a result of an accident caused by a bus bearing Registration No.TN 33 N 2073 owned by the Appellant Transport Corporation. The dependents of the deceased Subramani are the respondent Nos.1 to 5 in this appeal.

(ii)They preferred a claim before the Motor Accident Claims Tribunal in M.A.C.T.O.P.No.251 of 2007, seeking a compensation of Rs.15,00,000/- for the death of Subramani as a result of the accident caused by the bus owned by the Appellant Transport Corporation.

(iii)The Motor Accident Claims Tribunal by its Award dated 06.02.2009 in M.C.O.P.No.251 of 2007, directed the Appellant to pay the respondent Nos.1 to 5 a sum of Rs.8,65,000/- together with interest at the rate of 7.5% per annum from the date of claim till the date of realization.

3.Aggrieved by the Award dated 06.02.2009, passed by the Motor Accident Claims Tribunal in M.A.C.T.O.P.No.251 of 2007, the instant appeal has been filed by the Appellant Transport Corporation.

4. Heard, Mr.M.S.Prem Kumar, learned Counsel for the Appellant and Mr.J.Prithivi, learned Counsel for the respondent Nos.1 to 5.

5.According to the learned Counsel for the Appellant, three vehicles are involved in the accident which has resulted in the death of Subramani. The Appellant Transport Corporation bus was coming from North to South and a Van in which the deceased was travelling from South to North and an Ambassador Car was coming from West to East. The accident happened in a junction where there was a traffic signal. According to him, the Ambassador Car which was coming from West to East is also at fault and therefore, without impleading the owner and driver of the Ambassador Car, the Tribunal has erroneously awarded the entire liability to the Appellant Transport Corporation under the impugned Award. The Appellant has not questioned the quantum of compensation awarded by the Tribunal. But has only questioned its liability in this appeal.

6.Per contra, learned Counsel for the respondent Nos.1 to 5 would submit that FIR was registered only against the driver of the bus owned by the Appellant Transport Corporation. According to the learned Counsel for the respondent Nos.1 to 5, there is a



clear finding given by the Tribunal based on the oral and documentary evidence let in by the respondent Nos.1 to 5 before the Tribunal that only due to the rash and negligent driving by the driver of the bus owned by the Appellant Transport Corporation, the accident had happened.

7.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 FIR was registered only against the driver of the bus owned by the Appellant Transport Corporation. Under the FIR, it is stated that only due to the rash and negligent driving by the Appellant Transport Corporation, the accident happened. No contra evidence has been produced by the Appellant to disprove the facts stated in the FIR.

(b)It has been the consistent stand of the respondent Nos.1 to 5 before the Tribunal that only due to the rash and negligent driving by the driver of the Appellant Transport Corporation, the accident had happened. If the Appellant Transport Corporation was of the view that the Ambassador Car which came from West to East was also at fault, then the Appellant Transport Corporation could have impleaded the owner of the said Ambassador Car as a party to the proceedings before the Tribunal. But in the instant case, no such impleading application was filed by the Appellant Transport Corporation before the Tribunal to implead the owner and driver of the Ambassador Car. Therefore, in the considered view of this Court, at this stage, in the appeal, the said plea cannot be entertained by this Court.

(c)The respondent Nos.1 to 5 have filed ten documents before the Tribunal which were marked as Exs.P1 to P10 and two witnesses were also examined namely the first respondent in this appeal as well as the driver of the Van, in which the deceased was travelling at the time of the accident. On the side of the Appellant, no document was filed but only one witness was examined.

8.In the light of the above observations, this Court is of the considered view that there is no infirmity in the Award passed by the Tribunal. Accordingly, there is no merit in the appeal and the appeal is dismissed. However, there shall be no order as to costs. The Appellant is directed to deposit the amount awarded by the Tribunal together with interest at the rate of 7.5% per annum from the date of claim till the date of



realization, after deducting the amount already deposited, if any, to the credit of M.C.O.P.No.251 of 2007, on the file of the Motor Accident Claims Tribunal (II Additional Subordinate Court), Erode, 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.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1.The Motor Accident Claims Tribunal
(II Additional Subordinate Court), Erode

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

+1cc to Mr.N.Anand, Advocate Sr.65934

+1cc to Mr.S.Kaithamalai Kumaran, Advocate Sr.65682

C.M.A.No.2062 of 2010

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srg 01/11/2018