

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 29.11.2018
CORAM:
THE HONOURABLE MRS.JUSTICE R. HEMALATHA
C.M.A.No.2067 of 2011

1.Sumaiya Parveen
2.Musthaq Ahmed

... Appellants

..Vs..

The Managing Director,
Tamilnadu State Transport Corporation,
Vellore.

... Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the decree and judgment in M.C.O.P.No.52 of 2010, dated 25.03.2011 on the file of the Motor Accidents Claims Tribunal/Additional District Judge (Fast Track Cour), Tirupattur, Vellore District.

For Appellants : Mr.A.Sudesh Kumar

For Respondent : Mr.G.Palani

JUDGMENT

The appellants are the claimants in M.C.O.P.No.52 of 2010 on the file of the Motor Accidents Claims Tribunal/ Additional District Judge, (Fast Track Court) Tirupattur, Vellore District.

2. The appellants/claimants filed the above claim petition under Section 166 of the Motor Vehicles Act, seeking of compensation to Rs.3,00,000/- for the death of their son Yasir in a road accident.

3.The brief case of the appellants/claimants are as follows:-

On 19.03.2008, the deceased, Yasir was riding his two wheeler TVS 50 bearing Registration No.TN-23-U-4731 on Ambur-Vaniyambadi Road and his brother Ansari was the pillion rider. At about 3.30 p.m., when they were nearing Sanangkuppam, a speeding bus bearing Registration No.TN-23-N-1788 belonging to the respondent hit the two wheeler, as a result of which, the deceased Yasir was thrown out of the two wheeler and died on spot. According to the appellants/claimants, the rash and

negligent driving of the driver of the respondent /Tamil Nadu State Transport Corporation was the cause of the accident and therefore, the respondent is liable to pay compensation to the claimants.

4. The respondent filed a counter denying their liability.

5. After analysing the evidence on record, the learned Additional District Judge, dismissed the claim petition contending that the deceased was responsible for the accident and therefore, the respondent/Managing Director Tamil Nadu State Transport Corporation is not liable to pay any amount towards compensation to the appellants/claimants.

6. Aggrieved over the order passed by the tribunal, the appellants/claimants have filed the present appeal seeking compensation of Rs.2,00,000/-.

7. Mr.A.Sudesh Kumar, the learned counsel for the appellants would contend that the trial Court merely based on the evidence of the driver of the bus and the xerox copy of the news paper report (Ex.R1) has held that the deceased alone was rash and negligent in riding his two wheeler. It is further contended by him that the First Information Report (Ex.P1) clearly shows that the driver of the bus was rash and negligent in driving his bus and without considering the evidence of Ansari (PW2), who is one of the eye witnesses to the occurrence, the trial Court has dismissed the entire claim petition, which cannot be sustained.

8. Per contra, the learned counsel appearing for the respondent would contend that the trial Court has properly assessed the evidence on record and had dismissed the claim petition.

9. PW2, in his evidence has deposed that the deceased was riding his two wheeler TVS 50 bearing Registration No.TN-23-U-4731 on the left hand side of the Ambur Vaniyambadi road. During the course of cross examination, it was suggested to him that the rider of the two wheeler hit the center median and fell on the road, which resulted in the accident. This suggestion was totally denied by the PW2.

10. The trial Court has held that apart from PW2 and deceased, one more person also travelled in the two wheeler and since the rear tyre of the bus got smashed, it is clear that the deceased alone was responsible for the accident. Absolutely there is no conclusive proof to hold that three persons had travelled in the two wheeler and even assuming that there were three persons in the two wheeler, that itself would not be a ground to dismiss the claim petition, when it is factually

found that the driver of the bus was at fault and the tribunal was wrong in dismissing the entire claim petition. Even otherwise, the driver of the heavy motor vehicle should take extra care while driving his vehicle and he should see on all the sides of the road.

11. In the instant case, the eye witness account is clear that the driver of the bus was rash and negligent in driving his bus. However, he also deposed that there is a separate lane for riding two wheelers on the road in which the accident took place and that the deceased drove his vehicle on the lane which was earmarked for the four wheelers. Therefore, 25% contributory negligence can be fixed on the deceased. Since the age of the deceased was just 15 years on the date of the accident, Applying the principles laid down in Kishan Gopal & another Vs. Lala & others reported in 2013 (2) TN MAC 358 (SC), a sum of Rs.5,00,000/- is awarded to the claimants together with interest at the rate of 7.5% p.a. Since contributory negligence of 25% is fixed on the deceased, a sum of Rs.3,75,000/- together with interest at the rate of 7.5% per annum from the date of claim petition, till the date of deposit.

12. In the result,

(i) The appeal is allowed. No costs.

(ii) The respondent/ The Tamil Nadu State Transport Corporation is directed to deposit a sum of Rs.3,75,000/- along with interest and costs, within a period of four weeks from the date of receipt of a copy of this order.

(iii) On such deposit being made, the appellants/claimants are directed to pay the deficit court fee before the tribunal and after payment of the Court fee, the appellants/claimants are at liberty to withdraw the entire amount together with interest.

(iv) The award is apportioned among the claimants as stated below.

(a) The first claimant is entitled to a sum of Rs.2,75,000/- together with accrued interest and costs.

(b) The second claimant is entitled to a sum of Rs.1,00,000/-.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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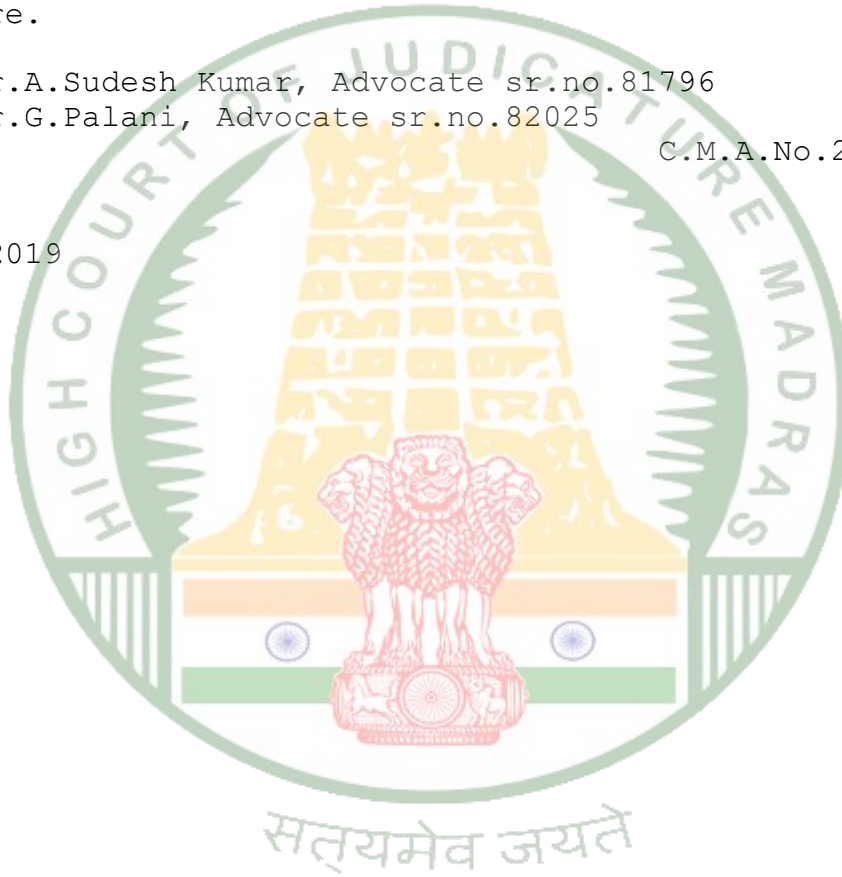
To

1. The Motor Accidents Claims Tribunal/
Additional District Court (FTC), Tirupattur,
Vellore District.
2. The Managing Director,
Tamilnadu State Transport Corporation,
Vellore.

+1cc to Mr.A.Sudesh Kumar, Advocate sr.no.81796
+1cc to Mr.G.Palani, Advocate sr.no.82025

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