

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.12.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2612 of 2015

and

M.P.No.1 of 2015

The Managing Director,
Tamilnadu State Transport Corporation,
Villupuram

..Appellant/Respondent

Vs.

1.Malliga
2.Kullammal
3.Minor Sathya
4.Minor Saradha
5.Minor Sakthivel
6.Minor Venkatesan

..Respondents /Petitioners

(Minor respondents 3 to 6 are
represented by their mother, 1st respondent)

Prayer: This Civil Miscellaneous Appeal is filed under
Section 173 of Motor Vehicles Act, 1988 against the award and
decree dated 25.09.2014 made in M.C.O.P.No.348 of 2011, on the
file of III Additional District Court, (Motor Accidents Claims
Tribunal), Kallakurichi.

For Appellant : Mr.K.J.Sivakumar

For Respondents: No appearance

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J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the
award dated 25.09.2014 made in M.C.O.P.No.348 of 2011, on the
file of III Additional District Court, (Motor Accidents Claims
Tribunal), Kallakurichi.

2.The appellant-Transport Corporation is the respondent in M.C.O.P.No.348 of 2011, on the file of III Additional District Court, (Motor Accidents Claims Tribunal), Kallakurichi. The respondents filed the said claim petition, claiming a sum of Rs.10,00,000/- as compensation for the death of one Selvaraj, husband of the 1st respondent, mother of the 2nd respondent and father of the respondents 3 to 6, who died in the accident that took place on 30.07.2008.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the driver of the appellant-Transport Corporation bus is responsible for the accident and directed the appellant to pay the compensation of a sum of Rs.7,20,000/- as compensation to the respondents.

4.Aggrieved by the said award, the appellant-Transport Corporation has come out with the present appeal.

5.The learned counsel appearing for the appellant contended that the Tribunal erroneously fixed negligence on the part of the driver of the appellant-Transport Corporation bus. The Tribunal ought to have seen that the accident occurred only due to the negligence on the part of the driver of the lorry, who has parked the lorry without any indicator. The multiplier of '17' applied by the Tribunal for a person aged 32, is not correct, as the correct multiplier is only '16'. The respondents have not proved that the deceased was working as a Mason and was earning Rs.6,000/- per month. The Tribunal erred in fixing the notional income of the deceased at Rs.4,500/- per month and ought to have fixed only Rs.3,000/- per month and prayed for setting aside the award of the Tribunal.

6.Heard the learned counsel for the appellant and perused the materials on record. Though notice has been served on the respondents and their names are printed in the cause list, there is no representation for them either in person or through counsel.

7.From the materials on record, it is seen that the contention of the respondents is that the driver of the bus belonging the appellant drove the same in a rash and negligent manner and dashed against the stationed lorry and due to that, accident occurred. As a result of which, the deceased sustained injuries and died. On the other hand, driver of the bus, as R.W.1 has deposed that the lorry was parked without any indicator and to avoid the on coming lorry with bright headlights, the driver turned the bus to the left and in the said impact, the accident occurred. From the award of the Tribunal, it is seen that P.W.2, the alleged eye-witness has not stated that the lorry was parked with indicator and driver of

lorry was not negligent. It is pertinent to note that the accident occurred at 3.30 a.m, early morning and even if P.W.2 was traveling in the same bus, he could not have seen the parked lorry and there is nothing in the award of the Tribunal to show that lorry was parked with indicator. The Tribunal has rejected the evidence of R.W.1 only on the ground that no independent witness was examined to corroborate the evidence of R.W.1. The said reasoning is erroneous. Considering all the materials on record, this Court is of the considered view that both the drivers of bus belonging to the appellant as well as the lorry are responsible for the accident and negligence is fixed equally on both the drivers. The respondents have not impleaded the owner and insurer of the lorry. The appellant is liable to pay only 50% of the amounts awarded by the Tribunal.

8.As far as the quantum of compensation is concerned, the notional income fixed by the Tribunal is not excessive and the Tribunal has not granted any amounts for future prospects. The amounts granted under different heads are just compensation and therefore, this Court is not inclined to interfere with the multiplier applied by the Tribunal.

9.In the result, the appeal is partly allowed, directing the appellant to pay 50% (Rs.3,60,000/-) of the amount awarded by the Tribunal with interest and costs, less the amount already deposited, if any, within a period of twelve weeks from the date of receipt of a copy of this order. The appellant-Transport Corporation is permitted to withdraw the excess amount, if any lying in the deposit to the credit of M.C.O.P.No.348 of 2011, if the entire award amount has already been deposited by them. On such deposit, the respondents 1 and 2/claimants 1 and 2 are permitted to withdraw their share of the award amount with interest and costs, as per the ratio of apportionment fixed by the Tribunal, after adjusting the amount, if any, already withdrawn. The share of the minor respondents 3 to 6 are directed to be deposited in any of the Nationalized Bank, till the minors attain majority. The 1st respondent/mother of the minor respondents is permitted to withdraw the interest, once in three months for the welfare of the minor respondents 3 to 6. No costs. Consequently, connected Miscellaneous Petition is closed.

gsa

Sd/-

Assistant Registrar(CS VI)

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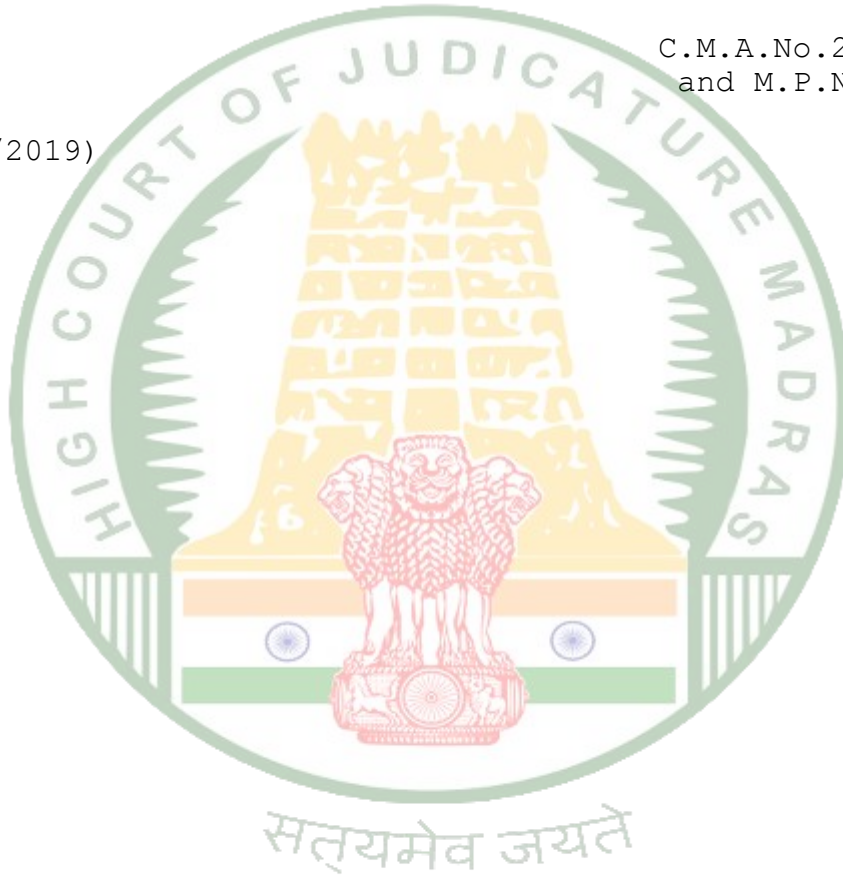
Sub Assistant Registrar

To

1. The III Additional District Judge,
(Motor Accidents Claims Tribunal),
Kallakurichi.
2. The Section Officer,
V.R.Section,
High Court, Madras - 104. (2 copies)

C.M.A.No.2612 of 2015
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