

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :02.11.2018

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.2927 of 2013
and M.P.No.1 of 2013

The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Salamedu, Villupuram.Appellant/Respondent

Vs

- 1.Yamuna W/o. Vijayakumar
- 2.Minor.Senaka, D/o.Vijayakumar
- 3.Minor.Darish, S/o.Vijayakumar
- 4.Chellam W/o. Perumal ...Respondents/Petitioners

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree passed by the Motor Accidents Claims Tribunal, IInd Additional District Court, Tindivanam made in MCOP.No.24 of 2011 dated 4.12.2012.

For Appellant : Mr.K.J.Siva Kumar

For Respondents : Mr.A.Asif Basha for R1
R2 & R3 - Minor represented by R1
Not ready in notice reg.R4

JUDGMENT

The instant appeal has been filed by the Transport Corporation challenging the Award dated 04.12.2012, passed by the Motor Accidents Claims Tribunal, IInd Additional District Court, Tindivanam in MCOP.No.24 of 2011.

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

(i)One Vijayakumar died on 01.05.2009, as a result of an accident caused by a bus bearing Registration No.TN-32-N-2231 owned by the Appellant Transport Corporation. The deceased was travelling as a passenger in the bus owned by the Appellant

Transport Corporation and due to the rash and negligent driving by the driver of the bus he fell down from the bus and the back tyre of the bus ran over him which resulted in his death. The respondent Nos.1 to 4 are the dependents of the deceased, who are his wife, two minor children and his mother.

(ii) They preferred a claim before the Motor Accident Claims Tribunal in MCOP.No.24 of 2011, seeking a compensation of Rs.15,00,000/- for the death of Vijayakumar.

(iii) The Motor Accidents Claims Tribunal after considering the oral and documentary evidence available on record has passed an Award dated 04.12.2012 in M.C.O.P.No.24 of 2011, directing the Appellant to pay 50% of the total compensation of Rs.7,53,000/- assessed by the Tribunal together with interest at the rate of 7.5% per annum from the date of claim till the date of realisation and in its finding has attributed 50% contributory negligence on the part of the deceased.

3. Aggrieved by the Award dated 04.12.2012, passed by the Motor Accident Claims Tribunal in MCOP.No.24 of 2011, the instant appeal has been filed by the Transport Corporation.

4. Heard, Mr.K.J.Siva Kumar, learned Counsel for the Appellant and Mr.A.Asif Basha, learned Counsel for the respondents.

5. According to the learned Counsel for the Appellant, the Tribunal failed to consider under the impugned Award that the Transport Corporation bus was proceeding with moderate speed at the time, when the deceased was travelling in the foot board, lost his grip and fell down and sustained fatal injuries. According to him, the entire negligence is only on the part of the deceased and therefore, the Appellant Transport Corporation is not liable to compensate the claim of the respondents. The learned Counsel for the Appellant further contended that the quantum of compensation assessed by the Tribunal under the impugned Award is also excessive.

6. Per Contra, the learned Counsel for the respondents would submit that the FIR was registered only against the driver of the bus owned by the Appellant Transport Corporation. He further submitted that on the side of the respondents, the first respondent was examined as witness (PW1) and an eyewitness namely the co-passenger in the bus was examined as PW2. According to him, both of them have deposed that only due to the rash and negligent driving by the driver of the bus, the deceased was overthrown from the bus and the back tyre of the bus ran over the victim which resulted in his death. Before the Tribunal, no documents were filed on the side of the Appellant and the driver of the bus, who is not an independent witness was

alone examined as a witness by the Appellant Transport Corporation.

7.The Tribunal under the impugned Award has considered the oral and documentary evidence available on record and only thereafter has fastened 50% liability on the part of the Appellant based on the finding that there was 50% contributory negligence on the part of the deceased also.

8.The Tribunal has passed a reasoned and well considered Award and this Court is in agreement with the said finding. Insofar as, the total compensation assessed by the Tribunal under the impugned Award, the Tribunal has rightly assessed the same following the well settled principles as laid down by the decisions of this Court as well as the decisions of the Hon'ble Apex Court.

9.In the light of the above observations, this Court is of the considered view that there is no merit in the instant appeal. Accordingly, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

10.The Appellant Transport Corporation 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 realisation as per the apportionment made by the Tribunal, after deducting the amount already deposited, if any, to the credit of M.C.O.P.No.24 of 2011, on the file of the Motor Accident Claims Tribunal, IIInd Additional District Court, Tindivanam, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the respondent Nos.1 and 4 are permitted to withdraw the said sum by filing an appropriate application. Insofar as, the minor respondents Nos.2 and 3 are concerned, their respective shares shall be deposited in any one of the Nationalised Banks till they attain majority and the first respondent/mother of the minors is permitted to withdraw the interest accrued once in six months.

Sd/-
Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

arb/pam

To

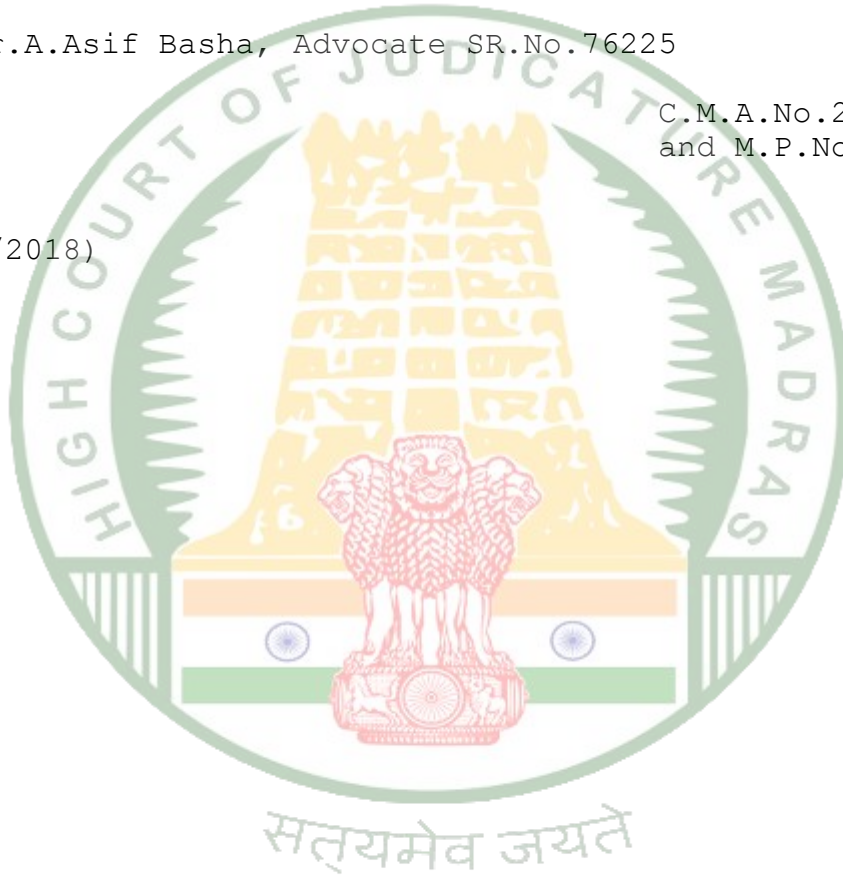
1. IInd Additional District Court,
The Motor Accident Claims Tribunal
Tindivanam

2.The Section Officer,
Vernacular Section,
Madras High Court.(+2 Copies)

+1cc to Mr.A.Asif Basha, Advocate SR.No.76225

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BR(CO)
GMY(10/12/2018)



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