

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.298 of 2015
and M.P.No.1 of 2015
and C.M.P.No.167 of 2018

Metropolitan Transport Corporation Ltd.,
Represented by its Managing Director
Pallavan Illam, No.2, Anna Salai
Chennai-600 002 ...Appellant/Respondent in
Trial Court

vs

1.R.Selvi
2.Stellamary ..Respondents/Petitioners in
Trial Court

Civil Miscellaneous Appeal filed against the judgment and
decree dated 23.04.2014 passed in M.C.O.P.No.4808 of 2011 by the
Motor Accident Claims Tribunal, Court of Small Causes, Chennai.

For appellant : : Mr.S.Swaminathan
For Respondents : : Mr.V.Balamurugan

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the
respondent before the Tribunal viz., the Transport Corporation,
against the judgment and decree dated 23.04.2014 passed in
M.C.O.P.No.4808 of 2011 by the Motor Accident Claims Tribunal,
Court of Small Causes, Chennai.

2. For convenience sake, the parties are referred to
hereunder according to their litigative status before the
Tribunal. The case of the Petitioners before the Tribunal as
per their claim petition is that on 20.02.2011, when the
deceased boarded the respondent corporation bus bearing
Reg.No.TN-01-N-4218 along with his wife at Elaimmani Koil Bus
stop, at Ennore Express Highways at about 6.30 hours, the driver
of the respondent corporation bus applied sudden brake and in
that impact, the deceased who was standing near the conductor
seat was thrown out of the bus and suffered fatal injuries. The
Petitioners claimed that the negligent driving of the driver of
the bus alone is responsible for the accident. At the time of
death, the deceased was aged 40 years and by working as Sewage

cleaner at Thiruvottiyur Municipality, Chennai, he was getting monthly salary of Rs.15,000/-. The petitioners, who are the wife and daughter of the deceased were dependant on his income. Thus the petitioners claimed a sum of Rs.20,00,000/- as compensation from the respondent.

3. On the other hand, opposing the petition, by filing counter, the respondent Corporation contends that the driver was not responsible for causing the accident. According to the respondent, when the bus was approaching the bus-stop near Elaimman Koil Stop very slowly, a male passenger aged about 60 years attempted to get down from the bus and in that process, lost balance and fell down and suffered injuries. It was only due to the negligence on the part of the said person, the accident took place. The driver of the bus was not responsible and the FIR was registered against the deceased. The respondent also disputed the age, avocation and income of the deceased. It is further contended that in any event, the deceased also contributed to the accident and as such, he should also be liable for the accident. As the claim of the petitioners is excessive, the respondent seeks dismissal of the Petition.

4. Before the tribunal, the petitioners examined P.W.1 to 3 and produced documents Ex.P.1 to 7 to substantiate their claim. On the side of the respondent, conductor and driver of the Bus involved in the accident were examined as R.W.1 and 2 and Ex.R.1 was produced. The Tribunal, on the basis of available materials before it, found that the accident occurred only due to negligence of the respondent corporation bus and awarded a sum of Rs.15,86,104/- as compensation to the petitioners. Aggrieved over the said finding of the Tribunal, the respondent-Transport Corporation has come forward with the present appeal.

5. The learned counsel appearing for the appellant/Transport Corporation contends that the Tribunal erred in concluding that the negligent driving of the respondent driver was the cause for the accident. The Tribunal also failed to consider the fact that the FIR was registered against the deceased at the instance of the passenger, who travelled in the bus. The Tribunal also erred in applying the multiplier and awarded higher amount of compensation under various heads. Thus the respondent/Transport Corporation seeks to set aside the award passed by the Tribunal and further prayed to entertain the appeal.

6. On the the other hand, the learned counsel for the petitioner/respondents herein, contended that only after analysing the entire materials available on record, the Tribunal has rightly fixed the negligence on the Corporation bus driver for causing the accident and also awarded just compensation to the claimants, who are the dependants of the deceased. As such, it is contended that no ground is made out to interfere with the

award passed by the Tribunal and seeks dismissal of the appeal.

7. On a perusal of the award passed by the Tribunal, it is seen that in the deposition of P.W.2, it is clearly stated that while the deceased along with 1st petitioner was travelling in the Transport Corporation bus in Route No.57N, before, he could get down from the bus, without noticing the same, the driver of the Corporation Bus started the bus, resulting in the deceased falling down from the bus and suffering fatal injuries.

8. Per contra, the respondent-corporation examined the crew of the bus as R.W.1 and R.W.2 and both deposed that before the bus came to halt in the bus stop, the deceased tried to get down and in the process, fell down and suffered grievous injuries. It is further stated that in this connection, at the instance of the complaint given by a passenger, the Police registered Ex.R.1-FIR against the deceased. Thus, it is contended that the negligence of the deceased alone is the cause of the accident.

9. Pointing it out, the learned counsel for the claimants/Petitioners contended that it is the paramount duty of the conductor of the bus to prevent any passenger from getting down from the bus, till it comes to halt. It is also pointed out that the driver of the bus cannot move the bus unless and until the conductor gave signal for the same. The learned counsel for the Petitioners relied upon the Ruling reported in 1997 1 L.W.226 [M.Jaganath Vs. Pallavan Transport Corporation Ltd., Madras] and contended that it is the duty of the conductor not to allow the passenger to get off from the bus before it come to a halt and that itself shows that there is negligence on the part of crew of the bus. The learned counsel also pointed out that the substantial evidence given by P.W.1 and 2 about the nature of accident will prevail over the contents of Ex.P.1-FIR and as such, the Tribunal has correctly held that the negligence of the crew of the Transport Corporation bus, as the reason for the accident. The learned counsel invited the attention of this court to the evidence of R.W.2, Conductor of the Bus, who has admitted in his evidence that he was issuing tickets in the middle of the bus when the accident occurred. R.W.1 driver of the bus also deposed that he did not notice the passenger getting down from the bus and only after hearing some noise, he stopped the bus. Pointing it out, the learned counsel for the Petitioners/claimants contended that the driver and the conductor were unaware about the deceased getting down from the bus and they noticed the accident only after hearing the noise of the deceased and as such, the claim of the respondent-Corporation that the deceased tried to get down from the bus before it stopped cannot be accepted. In such circumstances, it is clear that the ocular evidence of P.W.1 and P.W.2 who witnessed the accident can be believed and the finding of the

Tribunal that the accident occurred only due to the respondent corporation bus driver moving the bus even before the deceased got down from the bus, is just and proper and the same needs no interference.

10. The Petitioners/claimants contended that at the time of death, the deceased was aged 40 years and by working as Sewage cleaner at Thiruvottiyur Municipality, Chennai, he was getting monthly salary of Rs.15,000/-. The Tribunal based on the documents marked on the side of Petitioners, fixed the age of the deceased as 48 years, and pointed out that the deceased would retire at the age of 60 i.e., on 28.02.2023. Accordingly, applying the Apex Court Ruling reported in 2009(2) MAC 1(SC) [Sarla Verma Vs. Delhi Transport Corporation], added 30% towards future prospects and calculated the loss of dependency for 12 years as follows:-

$\text{Rs.}14861 \times \frac{2}{3} \times 12 \times 12 = \text{Rs.}14,26,656/-$.

Further, the Tribunal, applying the Ruling of this court reported in 2008(2) TN Mac 73 (DB) [M/s.National Insurance Company Limited Vs. 1.Shanthi Pandian and others], held that 50% of the income to be taken into account for the remaining period of one year and deducted 1/3 towards personal expenses of the deceased and calculated the loss of dependency for the service period and after retirement at Rs.14,86,104/-. In all, the Tribunal granted the following sums as compensation to the Petitioners:-

Loss of dependency after retirement	:Rs.14,86,104/-
Loss of consortium	:Rs. 25,000/-
Loss of love and affection	
to 2 nd petitioner	:Rs. 25,000/-
Loss of estate	:Rs. 10,000/-
Transport Expenses	:Rs. 5,000/-
Funeral expenses	:Rs. 10,000/-
Pain and suffering & mental agony	:Rs. 25,000/-
Total	:Rs.15,86,104/-

11. As far as quantum of compensation awarded by the Tribunal is concerned, no serious objection was raised by the learned counsel appearing for the appellant/Transport Corporation. Even otherwise, on an independent careful appreciation of the oral and documentary evidence available on record, the compensation awarded by the Tribunal, appears to be fair and just and no ground is made out by the appellant-Transport Corporation to interfere with the quantum of award.

12. Considering the entire materials available on record, this court is of the view that the findings rendered by the Tribunal on the issue of negligence as well as quantum of compensation does not warrant any interference.

In the result, the Civil Miscellaneous Appeal is dismissed. The award passed by the Motor Accidents Claims Tribunal, Court of Small Causes, Chennai in M.C.O.P.No.4808 of 2011, dated 23.04.2014 is confirmed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/--

Assistant Registrar(co)

//True Copy//

Sub Assistant Registrar

To

1.The Motor Accidents Claims Tribunal,
Court of Small Causes, Chennai.

2.The Section Officer,
V.R.Section, High Court, Madras.(2 copies)

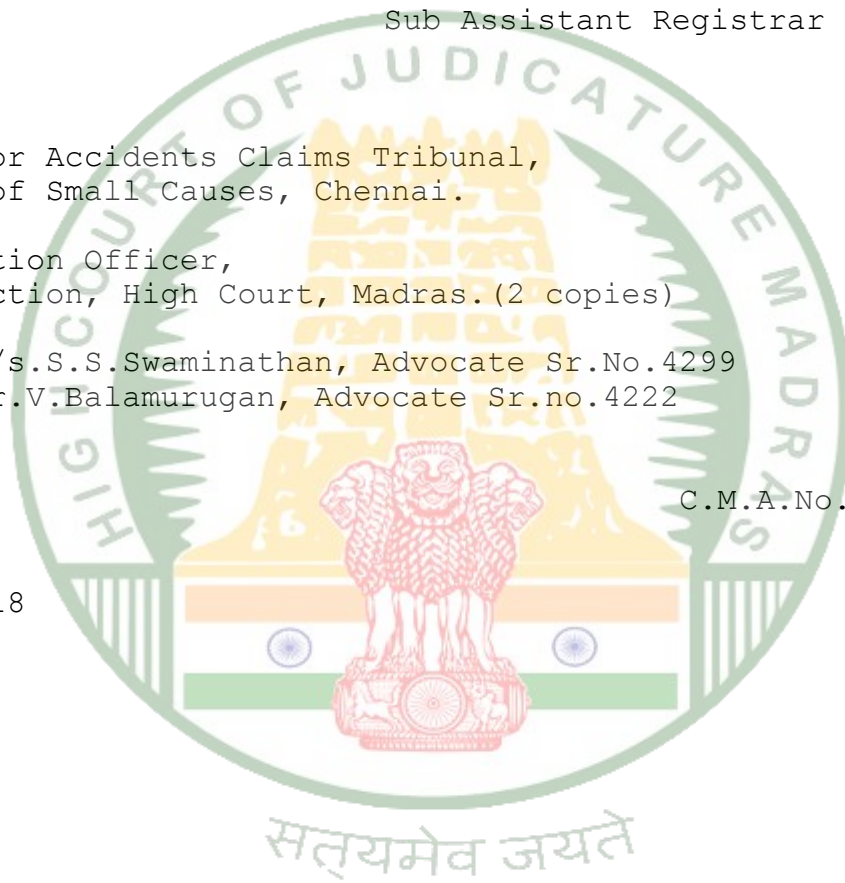
+1cc to M/s.S.S.Swaminathan, Advocate Sr.No.4299

+1cc to Mr.V.Balamurugan, Advocate Sr.no.4222

C.M.A.No.298 of 2015

VGII(CO)

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