

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.No.214 of 2018
and C.M.P.No.2495 of 2018

The Managing Director,
Tamil Nadu State Transport Corporation
(Coimbatore Division -I) Ltd.,
Coimbatore - 43. Appellant/Respondent

Vs.

1. Mohan

2. Gnanapriya Respondents/Petitioner

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 31.03.2016 made in M.C.O.P.No.1714 of 2014 on the file of the Motor Accident Claims Tribunal (II Additional District and Session Judge), Tiruppur.

For Appellant : Mr.J.Sivakumar

For Respondents : Mr.Ma.P.Thangavel

J U D G M E N T

Aggrieved over the award of compensation passed by the Motor Accident Claims Tribunal (II Additional District and Session Judge), Tiruppur, dated 31.03.2016 in M.C.O.P.No.1714 of 2014, the Transport Corporation has preferred this Civil Miscellaneous Appeal.

2. On 03.10.2014, when the driver of the appellant/Transport Corporation was driving the vehicle bearing registration No.TN-38-N-1545 at Pongalur to Tiruppur Road near Ganapathy Palayam. The vehicle hit the child of the respondent aged about 18 months, consequent to the same, the child succumbed to injuries.

3. In order to prove the negligence, the claimant-father examined himself as P.W.1 and marked documents Ex.A1 to Ex.A4. On the side of the respondent, driver of the vehicle was examined as a witness and no documents were marked.

4. The Tribunal, considering the elaborate evidence, has held that the negligence is on the part of the driver of the appellant/Transport Corporation and following the judgment of the Hon'ble Supreme Court reported in 2013 (2) TNMAC 358 (SC) (Kishan Gopal and another Vs. Lola), has fixed the loss of income at Rs.30,000/- per annum and based on the age of the parents has fixed the multiplier at 16 and arrived at a sum of Rs.4,80,000/- towards "loss of income". Besides, the Tribunal has awarded a sum of Rs.50,000/- towards loss of love and affection to the parents, a sum of Rs.10,000/- towards funeral expenses and a sum of Rs.10,000/- towards transportation.

5. According to the appellant, the negligence ought not to have been fixed on the part of the driver. The claimants have negligently allowed the child, who was 1 ½ years to play on the road, knowing well that it is a busy traffic area and the vehicles are plying on the road. The accident had taken place, because of negligence of the child as well as her parents. Therefore, the liability ought not have been fastened on the driver of the appellant/ Transport Corporation.

6. I have considered the materials on record.

7. The contention that the child had negligently come and dashed against the vehicle and she was the cause for an accident cannot be accepted. When an experienced driver drives the vehicle, he should be circumspective and should run the vehicle very cautiously. While driving the vehicle there are chances of people running, crossing or walking leisurely on the road and due care and caution should be taken by the driver while driving the vehicle.

8. In the instant case, the deceased is a child, who was 18 months old. A child cannot be expected to be cautious while walking on the road and to adhere to the traffic Rules. Moreover the parents will not allow the children to run on the roads and invite risk of life. Therefore, the finding of the Tribunal that the driver of the offending vehicle was rash and negligent is very much correct and following the judgment of the Hon'ble Supreme Court, the quantum of compensation has been fixed.

9. Therefore, I do not find any reasons to interfere with the finding of the Tribunal and accordingly, the compensation of Rs.5,00,000/- (Rupees Five lakh only) with interest at 7.5% from the date of petition till the date of deposit is confirmed. Hence, the award passed by the Motor Accident Claims Tribunal (II Additional District and Session Judge), Tiruppur, dated 31.03.2016 in M.C.O.P.No.1714 of 2014 is

confirmed.

10. In the result, this Civil Miscellaneous Appeal is dismissed as the appeal merits no consideration. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VIII)

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Sub Assistant Registrar

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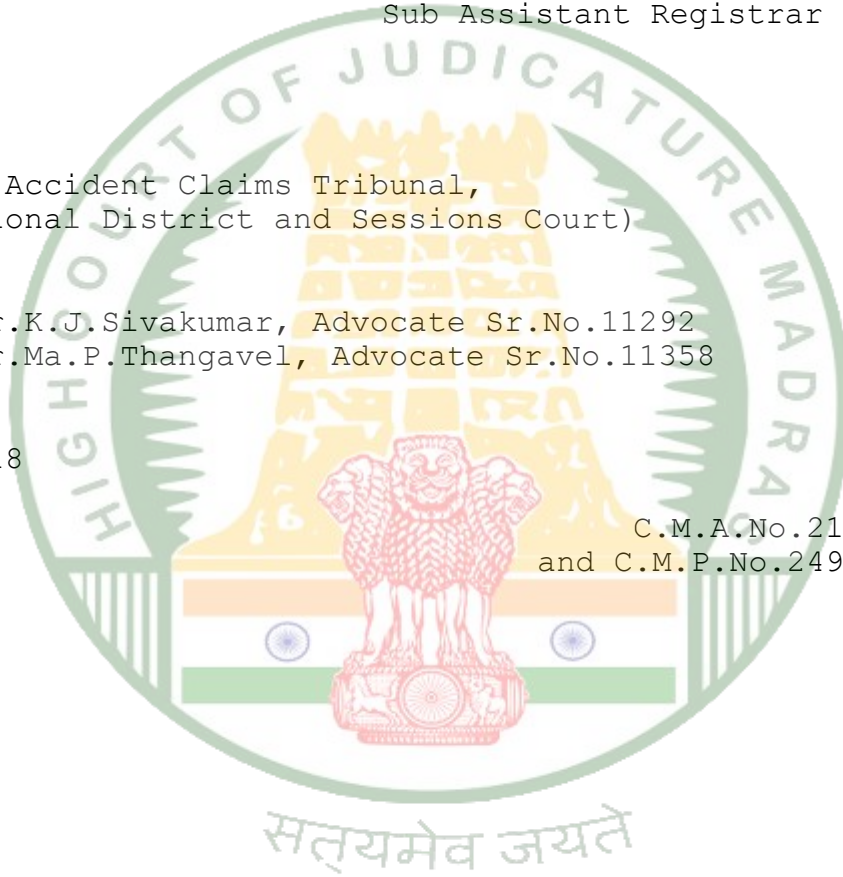
To

The Motor Accident Claims Tribunal,
(II Additional District and Sessions Court)
Tiruppur.

+1cc to Mr.K.J.Sivakumar, Advocate Sr.No.11292
+1cc to Mr.Ma.P.Thangavel, Advocate Sr.No.11358

RR(co)
sm:8.5.2018

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