

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.931 of 2018
and C.M.P.No.7628 of 2018

The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Division II, Vellore. ..Appellant/Respondent

Versus

1.Tamilarasi
2.Manonmani
3.Buvaneswari ..Respondents/Petitioners

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 04.12.2013 made in M.C.O.P.No.1094 of 2013 on the file of the Motor Accident Claims Tribunal, Special Subordinate Judge, Tirupattur.

For Appellant : Mr.S.V.Vasantha Kumar

J U D G M E N T

The appellant/Transport Corporation has filed this appeal against the judgment and decree dated 04.12.2013 made in M.C.O.P.No.1094 of 2013 on the file of the Motor Accident Claims Tribunal, Special Subordinate Judge, Tirupattur.

2. With the consent of the learned counsel for the appellant, the matter is taken up for final disposal at the time of admission stage itself.

3. For the sake of convenience, the parties are referred to hereunder according to their litigative status before the Tribunal.

4. The case of the petitioners/claimants is that on 31.10.2010 at about 11.00 p.m., while the deceased was proceeding in his two wheeler bearing Registration No.TN-23-BZ-8622 near Reliance Petrol Bunk at Ramapuram in the Bangalore to Chennai N.H.Road, the respondent bus bearing Registration No.TN-23-N-1714 came at high speed dashed against the two wheeler, causing fatal injuries to the deceased Kanniyappan, who

subsequently died in the Government Hospital, Walajapet. The accident occurred due to rash and negligent driving by the respondent driver. The deceased was aged 24 years and by working as mason was earning Rs.10,000/- per month. The petitioners who are the wife, mother and sister of the deceased were depending on his income. Thus, the petitioners/claimants sought for a sum of Rs.10,00,000/- as compensation from the respondent/Transport Corporation.

5. On the other hand, opposing the claim of the petitioners/claimants, by filing counter, the respondent/Transport Corporation contends that the accident did not occur in the manner alleged by the petitioners/claimants. The respondent bus bearing Registration No.TN-23-N-1714 was not involved in the accident as stated in the claim petition. On 31.10.2010, after the bus returned from Chennai, it was in the Depo undergoing maintenance and on the next day morning viz., 01.11.2010 at 5.40 a.m., only the bus was taken out of the depo and operated in another route. While so, on 01.11.2010, the Kaveripakkam Police station informed the depot officials through phone that the said bus was involved in the accident at 23 hours, on the previous day which is not correct. The police have registered a false case against the respondent bus driver and the claim of the petitioners/claimants is unsustainable. Hence, the respondent/Transport Corporation sought for dismissal of the petition.

6. Before the Tribunal, the petitioners/claimants examined P.W.1 to P.W.3 and produced documents Exs.P.1 to P.5 to prove their claim. On the side of the respondents R.W.1 and R.W.2 were examined and documents Exs.R.1 to R.6 were produced. On appreciation of evidence on record, the Tribunal found negligence of the respondent bus driver alone was the cause for the accident and passed an award for a sum of Rs.6,98,000/- payable by the respondent to the petitioners/claimants. Aggrieved over the said finding of the Tribunal, the respondent/Transport Corporation has come forward with the present appeal.

7. Heard the learned counsel for the respondent/Transport Corporation/appellant on the point of admissibility.

8. The learned counsel for the respondent/Transport Corporation/appellant contended that the lower Court failed to consider the respondent evidence properly and wrongly concluded that the respondent bus was involved in the accident. On the alleged accident date, the respondent bus completed its schedule trip, without any break-in-service and the same was not considered by the Tribunal. The award passed by the Tribunal is highly excessive. Thus, the respondent/Transport Corporation/Appellant sought for dismissal of the appeal and also to set aside the award.

9. It is clear from the records that the deceased was proceeding in his two wheeler bearing Registration No.TN-23-BZ-8622 in Bangalore to Chennai NH, on 31.10.2010 at about 11.00 p.m., and at that time, the respondent bus is alleged to have dashed against the two wheeler driven by the deceased. The police registered Ex.P.1 - F.I.R against the respondent bus driver only. The eye-witness to the occurrence, who deposed as P.W.3, clearly stated that the respondent bus bearing Registration No.TN-23-N-1714 came at high speed and dashed against the two wheeler, in which the deceased was proceeding. Thus, the petitioners/claimants contended that P.W.3 eye witness account and contents of Ex.P.1 - F.I.R registered against the respondent bus driver will clearly prove that the negligence of the respondent bus driver alone caused the accident.

10. However, it is seen from the records that the driver of the respondent bus, who deposed as R.W.1, has stated that on 31.10.2010 at 04.20 p.m., while he was driving the bus from Chennai to Vellore, there was some problem in the head light of the bus and after rectifying the same, he reached Vellore around 9.00 p.m. Then the bus was taken to respondent work shop for repairing the head light. The maintenance work went on for the whole night and another spare bus with Registration No.TN-23-N-1920 was operated in that route. Thus, the respondent contends that there is no possibility for their bus bearing Registration No.TN-23-N-1714 being involved in the accident as claimed by the petitioners/claimants. The respondent produced Electronic Collection sheet of the said bus as Ex.R.1 and copy of the gate entry register of the respondent depot in Vellore as Ex.R.2. The respondent also examined the Manager of the Krishna nagar depot as R.W.2 and he produced copy of the letter written to Vellore District S.P as Ex.R.3 and acknowledgement cards as Exs.R.4 to R.6. However, it is seen from the award passed by the Tribunal that the said plea of the respondent was not accepted by the Court below due to overwriting and correction in the said Exs.R.1 and R.2 register. In respect of the entries relating to their bus involved in the alleged accident, the Tribunal also pointed out that the entries are written in different colour ink with different pen by different persons. As such, the Tribunal concluded that there is every possibility of manipulation of entries in the said registers. The said conclusion appears to be well reasoned and proper. Further, the Tribunal found that if some other bus was operated in the same route, the respondent would have produced toll gate entries for the said bus. There is no evidence regarding the repair carried out to the bus at Ocheri, as claimed by R.W.1. Further as rightly pointed out by the petitioner, there is no reason for the police to register a false case against the respondent bus driver. The 3rd party eye-witness to the occurrence P.W.3, clearly stated about the involvement of the respondent bus in the above said accident. As

such, this Court finds nothing wrong with the conclusion arrived at by the Tribunal holding that the respondent bus bearing Registration No.TN-23-N-1714 was involved in the accident as alleged in the petition and only due to negligence of the said bus driver the accident occurred.

11. The petitioners contended that the deceased Kanniyapan was aged 24 years and by working as mason was earning Rs.10,000/- per month. It is clear from Ex.P.2 - Post mortem certificate and Ex.P.4 - Death report, the deceased was aged 24 years. Thus, his age is fixed as 24 years, the Tribunal, taking into account, the evidence of P.W.1, who is the wife of the deceased, fixed the earning of the deceased at Rs.120/- per day and Rs.4,500/- per month. The accident occurred in 2010, as such, the deceased being a mason the Tribunal correctly fixed the monthly income at Rs.4,500/- per month and as the number of dependents are three, deducted $1/3^{\text{rd}}$ of the income towards his personal expenses. The Tribunal also correctly applied the multiplier '18' as the deceased was aged 24 years. As such, the Tribunal fixed the loss of dependency at Rs.6,48,000/- (Rs.4500* $1/3$ *12*18*13) and provided for compensation under conventional heads and in total passed an award for a sum of Rs.6,98,000/- which appears to be just and proper. Thus, no ground is made out by the respondent/Transport Corporation for admitting the appeal. Since no infirmity is found in the award passed by the Tribunal, the plea of the appellant has to fail. The point is answered accordingly.

12. In the result, the award passed by the Tribunal on 04.12.2013 made in M.C.O.P.No.1094 of 2013 on the file of the Motor Accident Claims Tribunal, Special Subordinate Judge, Tirupattur, is confirmed and the Civil miscellaneous appeal is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

सत्यमेव जयते

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

bri

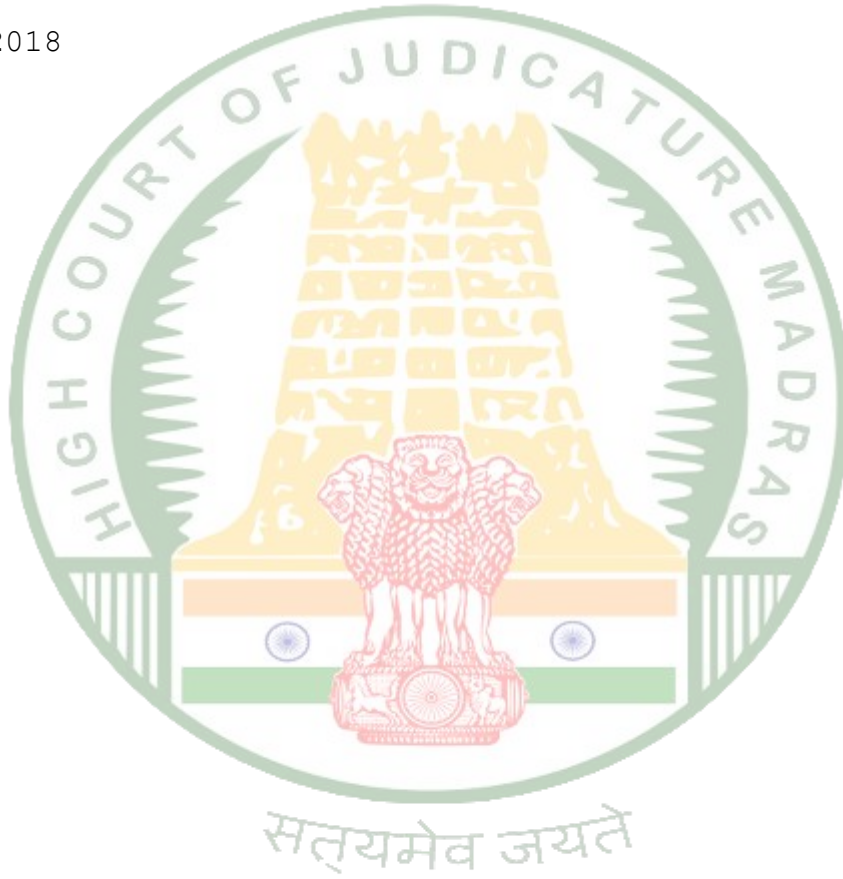
To

1.The Special Subordinate Judge,
Motor Accidents Claims Tribunal,
Tirupattur.

+lcc to Mr.S.V.Vasantha Kumar, Advocate sr.no.29366

C.M.A.No.931 of 2018

kji(co)
nr 20/04/2018



WEB COPY