

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.08.2018

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.1238 of 2010

and

M.P.No.1 of 2010

The Managing Director,
Metropolitan Transport Corporation Ltd.,
Pallavan Salai, Chennai - 600 002.

.. Appellant/ C.M.A.No.2891 of 2011

.Vs.

1.R.Ilavarasi
2.Usha-Minor
Rep. By her mother,
R.Ilavarasi
3.Selvamani
4.G.Muthukannu

..Respondents/Petitioner

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award passed by the Motor Accident Claims Tribunal, the Second Small Causes Court, by the decree and judgement made in MCOP. No.3764 of 1999 dated 30.06.2004.

For Appellant : Mr.K.V.Vasanthakumar

For Respondents 1 & 2 : Mr.S.Gopinathan

For Respondents 3 & 4 : No appearance

सत्यमेव जयते
J U D G M E N T

The instant appeal has been filed by the Transport Corporation challenging the Award passed by the Motor Accident Claims Tribunal, the Second Small Causes Court, Chennai by its Judgment and Decree in MCOP. No. 3764 of 1999 dated 30.06.2004 awarding a compensation of Rs.3,74,000/- together with interest at 9% per annum from the date of claim till the date of realisation in favour of the legal representatives of the deceased Radhakrishnan who are respondents 1 to 4 in this appeal. The Appeal has been dismissed insofar as respondents 3 and 4 vide order dated 14/08/2015 in M.P.No.1 of 2010 in CMA.No.1238 of 2010.

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

2. The deceased Radhakrishnan was a passenger in the bus owned by the Appellant/Transport Corporation bearing registration No.TN01-N-2607 and he was thrown out from the bus near Kuralagam, while the bus was proceeding from Gopalapuram to Parrys Corner and as a result of the accident, he died. The legal representatives of the deceased Radhakrishnan preferred a compensation claim before the Motor Accident Claims Tribunal, the Second Small Causes Court, Chennai in MCOP. No.3764 of 1999. The Motor Accident Claims Tribunal by its Judgment and Decree dated 30.06.2004 in MCOP. No.3764 of 1999 directed the Appellant to pay the respondents 1 to 4 a sum of Rs.3,74,000/- together with interest at the rate of 9% per annum from the date of claim till the date of realisation.

3. Aggrieved by the compensation awarded by the tribunal, the instant appeal has been filed by the Appellant/transport corporation.

4. Heard Mr.K.V.Vasantha Kumar, learned counsel of the Appellant and Mr.S.Gopinathan, learned counsel for the first and second respondents.

5. According to the learned counsel for the Appellant, the legal representatives of the deceased Radhakrishnan are not entitled for any compensation, since admittedly as seen from the evidence of PW2, an eye witness to the accident that the deceased Radhakrishnan was travelling in the foot board of the bus, at the time of accident. The learned counsel for the Appellant drew the attention of this Court to the evidence of PW2 which is recorded in the impugned Judgment which will clearly reveal that only due to the negligence of the deceased Radhakrishnan, the accident had occurred which resulted in his death. Therefore, according to the learned counsel for the Appellant/Transport Corporation is not liable to compensate the legal representatives of the deceased Radhakrishnan.

6. Per contra, learned counsel for the respondents 1 and 2 drew the attention of this Court to the findings of the Tribunal which will clearly establish that the deceased Radhakrishnan was standing at the entrance of the bus and the bus was proceeding to the bus stop. In front of the bus, there was a speed breaker and due to the sudden applying of breaks by the bus driver, the deceased Radhakrishnan was thrown out from the bus which resulted in his death. The Eye witness PW2 in his evidence has categorically stated that the accident resulted in the death of the deceased Radhakrishnan had occurred only due to the said fact. Therefore, according to the learned counsel for the

respondents 1 and 2, there is no negligence on the part of the deceased Radhakrishnan. According to the learned counsel for the respondents 1 and 2, the quantum of compensation awarded by the Tribunal is also in accordance with the settled principles of law as laid down by the decisions of this Court as well as by the decisions of the Hon'ble Apex Court.

7. This Court after considering the materials available on record and after perusing the award which is the subject matter of challenge and after hearing the submissions of the respective counsels, observes the following:

a) The Tribunal has taken into consideration all the defences raised by the Appellant which have been repeated in the grounds of the instant appeal and only thereafter, has passed the Award in favour of the respondents 1 to 4 who are the legal representatives of the deceased Radhakrishnan. The fact that there was a speed breaker in front of the bus and that the driver applying sudden breaks is also not disputed by the Appellant by letting in any contra evidence.

b) According to the learned counsel for the respondents 1 and 2, the deceased Radhakrishnan was thrown out from the bus only due to sudden applying of breaks by the driver of the bus has not been disproved by the Appellant/Transport Corporation.

c) The quantum of compensation awarded by the Tribunal is also not an unreasonable one and it is only in accordance with the settled principles of law.

8. Therefore, there is no merit in the instant appeal. Accordingly, the appeal is dismissed. The respondents 1 to 4 are permitted to withdraw the amount lying to the credit of MCOP. No. 3764 of 2009 on the file of the Motor Accident Claims Tribunal, the Second Small Causes Court, Chennai together with accrued interest by filing appropriate application. Consequently, connected miscellaneous petition is closed. However, there shall be no orders as to costs.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1.The Motor Accident Claims Tribunal,
The Second Small Causes Court,
Chennai.

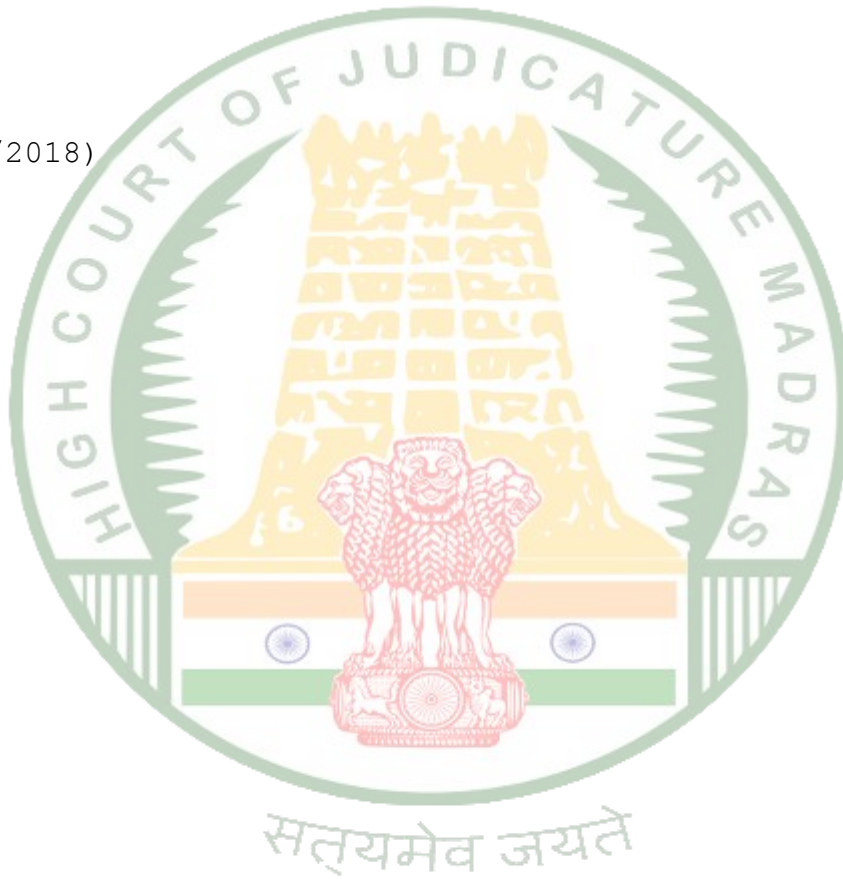
2.The Record clerk,
VR Section,
High Court, Madras.

+1cc to Mr.S.Gopinathan, Advocate, S.R.No.56734

+1cc to Mr.S.V.Vasantha Kumar, Advocate, S.R.No.56736

C.M.A.No.1238 of 2010 &
M.P.No.1 of 2010

VSNI (CO)
GSP (04/10/2018)



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