

IN THE JUDICATE OF MADRAS HIGH COURT

DATE : 05.02.2017

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THE HON'BLE MR.JUSTICE R.SUBBIAH

and

THE HON'BLE MR.JUSTICE P.D.AUDIKEVALU

C.M.A.No.2187 of 2013

and

M.P.No.1 of 2013

The Managing Director,
Tamil Nadu State Transport Corporation Limited.,
Division-II,
Kanchipuram. ... Appellant/Respondent

Vs.

1.Duraisamy
2.Ramesh
3.Kannan
4.Venkataraman
5.Raghavan
6.Vijaya
7.Mukundan
8.Murali
9.Kasthurirangan ... Respondents (Claimants)

Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act 1988 against the judgment and decree dated 30.10.2012 in M.C.O.P.No.1259 of 2008 passed by the Motor Accident Claims Tribunal (Chief Judge, Small Causes Court), Chennai.

For Appellant : S.Sairaman

JUDGMENT
(Judgment of the Court was delivered by R.SUBBIAH, J.,)

Today, when the matter is taken up for consideration, We find that the notice has not yet been served on the respondents. Hence, the learned counsel for the appellant sought time to serve notice on the respondents. But, We are of the opinion that since the matter is pertaining to the year 2013, it would be appropriate to find out as to whether there is any merit in

the case to order for a notice. Hence, the matter is taken up for hearing and the learned counsel for the appellant is directed to make his submissions with regard to the merits of the case.

2.This appeal has been filed by the Transport Corporation challenging the award dated 30.10.2012 in M.C.O.P.No.1259 of 2008 passed by the Motor Accidents Claims Tribunal (Chief Judge, Small Causes Court) Chennai.

3.The deceased in this case viz., one Vanaja is the wife of the 1st respondent/1st claimant and the mother of the respondents 2 to 9/claimants 2 to 9. It is the case of the claimants before the Tribunal that on 06.11.2017 at 9.15 am, while the said Vanaja was proceeding as a pillion rider in a two wheeler bearing Reg.No.TN 22 AK 0531 on G.S.T road from north to south, a MTC bus bearing Reg.No.TN 21 N 0650 came from behind at an hectic speed and hit the two wheeler, as a result of which the said Vanaja fell down and sustained greivous injuries all over the body and immediately, she was taken to Appollo Hospital and was admitted. While she was taking treatment as inpatient in the Hospital, she succumbed to her injuries on 07.02.2008. Hence, the claimant made a claim for Rs.16 lakhs as compensation as against the Transport Corporation before the Tribunal.

4.The claim made by the claimants before the Tribunal was resisted by the Transport Corporation by taking a defence that on 06.11.2007 at 9.15 am, the bus bearing Reg.No.TN 21 N 0650 was proceeding to Tambaram from Chengalpet and when the bus was nearing Kelapakkam, the two wheeler in which the deceased was travelling as pillion rider was proceeding in front of the bus. There was a heavy rain at that time. The rider of the wheeler and the pillion rider Vanaja, due to slippery nature of the road, fell down on the road and on seeing that, the driver of the bus stopped the bus ten feet ahead from the place where the deceased fell down. Hence, the driver of the bus was not responsible for the accident. Further, the accident took place on 06.11.2017, but the complaint was given to the Police Station only on 08.11.2007. Thus, they sought for dismissal of the claim petition.

5.Before the Tribunal, in order to prove their claim, on the side of the claimants, the 1st claimant/husband examined himself as P.W.1 and marked eight documents as Ex.P.1 to Ex.P.8. On the side of the Transport Corporation, the driver of the bus was examined as R.W.1, but no documentary evidence was produced on the side of the Transport Corporation.

6.The Tribunal, after analysing the entire evidence, has come to the conclusion that the accident was the result of the rash and negligent act of the driver of the bus belonging to the

appellant/Transport Corporation. By coming to such a conclusion, the Tribunal has calculated the compensation under different heads and passed an award for a sum of Rs.15,10,958/- as compensation. Aggrieved over the same, the Transport Corporation has come forward with the present appeal.

7.The learned counsel for the appellant/Transport Corporation submitted that the accident had occurred due to the own negligence of the rider of the two wheeler and in fact, on the side of the Transport Corporation, the driver of the bus was examined as R.W.1 before the Tribunal, who had clearly spoken to about the nature of the accident. But, without considering his evidence, the Tribunal has fixed the entire liability for the accident on the part of the driver of the bus. That apart, the learned counsel for the appellant/Transport Corporation submitted that the compensation amount awarded by the Tribunal is also on the higher side, hence, the same needs proper reduction.

8.Keeping the submissions made by the learned counsel for the appellant/Transport Corporation, We have carefully gone through the entire materials available on record.

9.From a perusal of the materials available on record, We find that in order to prove the defence, on the side of the Transport Corporation, the driver of the bus was examined as R.W.1 before the Tribunal. But his evidence is a self-interested one and in the absence any corroborative piece of evidence, his evidence cannot be relied upon. Hence, the liability fixed on the bus by the Tribunal cannot be interfered with as there is no contra evidence produced on the side of the Transport Corporation by examining independent witnesses.

10.So far as the quantum of compensation is concerned, We find that in the accident, the deceased Vanaja had sustained head injuries and she was taken to Apollo Hospital, where treatment was given to her from 06.11.2007 to 07.02.2008 and she died on 07.02.2008 in the hospital. Post-mortem report was marked as Ex.P.2. It is shown by the claimants that a sum of Rs.13,08,957.98 has been spent for the medical treatment alone. In order to prove the expenses incurred for the medical treatment of the deceased Vanaja, on the side of the claimants, the medical bills were marked as Ex.P.6. As the claimants have received a sum of Rs.1,00,000/- from the TTK Health Care Services Private Limited, the Tribunal after deducting Rs.1 lakh from the said amount of Rs.13,08,957.98, has arrived at a sum of Rs.12,08,957.98, rounded off to Rs.12,08,958/- and awarded the same under the head of medical expenses, which cannot be said to be on the higher side as the same is supported by documentary evidence.

11.Further, since the claimants have not produced any evidence to show the income earned by the deceased, the Tribunal has fixed a sum of Rs.36,000/- per annum, as value of a domestic services of the housewife, and applied multiplier 7 based on the age of the deceased, who was 63 years old at the time of accident, and thus, the Tribunal has awarded a sum of Rs.2,52,000/- as loss of income. That apart, the Tribunal has awarded a sum of Rs.5,000/- for loss of consortium to the 1st claimant and a sum of Rs.5,000/- each to the claimants 2 to 9 under the head of loss of love and affection and further, a sum of Rs.5,000/- for funeral expenses. Thus, the Tribunal has passed an award for a total sum of Rs.15,10,958/- as compensation to the respondents. Absolutely, We do not find any infirmity in the award passed by the Tribunal and the compensation amount awarded by the Tribunal cannot be said to be on the higher side at any stretch of imagination. Hence, We do not find any merit in this appeal and the appeal is liable to be dismissed.

12.Accordingly, the Civil Miscellaneous Appeal is dismissed, confirming the award passed by the Tribunal. If the award amount is not deposited so far, the Appellant/Transport Corporation is directed to deposit the entire compensation amount with interest as awarded by the Tribunal, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the respondents/claimants are entitled to withdraw their respective share amounts as apportioned by the Tribunal, by making necessary application before the Tribunal.

Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar(CS VI)

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Sub Assistant Registrar

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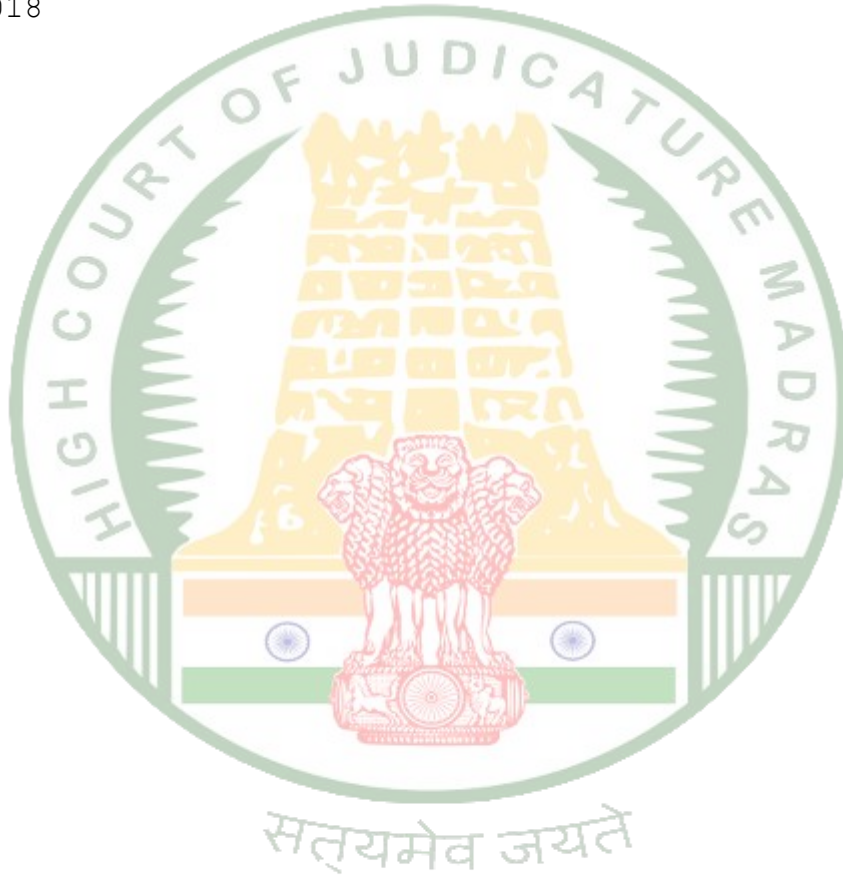
To,
The Chief Judge, Small Causes Court,
Motor Accident Claims Tribunal
Chennai

copy to
The Section Officer VR Section
High Court, Madras-104

+1 cc to Mr.S.Sairaman Advocate sr 9074

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