

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 17.09.2018

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THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.NO.505 of 2008

&

M.P.No.1 of 2008

The Managing Director,
Tamil Nadu State Transport Corporation,
(VPM DVN.1) Ltd.,
Villupuram Appellant/1st Respondent

Vs

1.Sangeetha
2.Minor Vimal
3.P.Ramasamy
4.Marimuthu Ammal
5.Minor Vijay
6.K.Bhoopathy (given up)
7.The Oriental Insurance Co. Ltd.,
No.1, Katpadi Road,
Vellore.

... Respondents/Petitioner/Respondents 2 & 3
(R2 & 5 Rep by their mother of
gardian 1st Respondnet)

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree and award made in MCOP.No.361 of 1999 dated 07.03.2002 on the file of the Motor Accident Claims Tribunal (Principal District Judge) Tiruvannamalai.

For Appellant : Mr.K.J.Sivakumar

For Respondent 7 : Mr.M.Krishnamoorthy

R6 : given up

JUDGMENT

The instant appeal has been filed by the Appellant Transport Corporation challenging the Award dated 07.03.2002 passed by the Motor Accident Claims Tribunal (Principal District Court, Tiruvannamalai) in MCOP.No.361 of 1999.

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

2. One Vijayakumar died on 26.10.1998 as a result of an accident caused by a bus bearing registration No. TN32-N-0688 owned by the Appellant Transport Corporation. The dependents of the deceased Vijayakumar who are the respondents 1 to 5 in the instant appeal preferred a compensation claim before the Motor Accident Claims Tribunal in MCOP.No.361 of 1999 seeking a compensation of Rs.3,00,000/- for the death of Vijayakumar as a result of the above said accident. The Motor Accident Claims Tribunal by its Award dated 07.03.2002 directed the Appellant to pay the respondents 1 to 5 a sum of Rs.1,80,000/- together with interest at the rate of 9% per annum from the date of claim till the date of Award and thereafter 6% till the date of realisation.

3. Aggrieved by the Award dated 07.03.2002 passed by the Motor Accident Claims Tribunal in MCOP.No.361 of 1999, the instant appeal has been filed by the Appellant Transport Corporation.

4. Heard Mr.K.J.Sivakumar, learned counsel for the Appellant and Mr.M.Krishnamoorthy, learned counsel for the seventh respondent. Till date, notice has not been served on the respondents. Since the appeal pertains to the year 2008 and this Court is going to confirm the Award, there is no necessity to serve notice on the respondents.

5. According to the learned counsel for the Appellant, the van which was coming in the opposite direction and collided with the bus which resulted in the death of Vijayakumar is also liable to compensate the respondents 1 to 5 who are the claimants in MCOP.No.361 of 1999. According to the learned counsel for the Appellant, there is contributory negligence on the part of the driver of the van also, which resulted in the accident and also resulted in the death of Vijayakumar for which compensation has been claimed by the respondents 1 to 5.

6. This Court has examined the impugned Award and the Tribunal has given a categorical finding that only due to the rash and negligent driving by the driver of the bus owned by the

Appellant Transport Corporation, the accident had happened which resulted in the death of Vijayakumar. The complaint has also been given only against the driver of the bus and the First Information Report dated 26.10.1998 which was marked as Ex.A1 before the Tribunal also discloses that the driver of the bus owned by the Appellant Transport Corporation is alone at fault. The Appellant has also not let in any oral and documentary evidence before the Tribunal to disprove the claim made by the respondents 1 to 5 that the driver of the bus owned by the Appellant Transport Corporation is alone at fault.

7. The respondents 1 to 5 have also examined two witnesses on their side namely the first respondent in this appeal and an eye-witness by named Pandurangan.

8. The Tribunal has considered the oral and documentary evidence let in by the respondents 1 to 5 and only thereafter, has come to the correct conclusion that the driver of the bus owned by the Appellant Transport Corporation was alone at fault. This Court is in agreement with the finding given by the Tribunal under the impugned Award. In such circumstances, this Court cannot hold that there was contributory negligence on the part of the driver of the van and there cannot also be an apportionment of liability between the seventh respondent Insurance Company and the Appellant Transport Corporation. The Tribunal, based on the materials available on record and the oral and documentary evidence, has rightly fastened the entire liability on the Appellant Transport Corporation.

9. In the light of the above observations, there is no merit in the instant appeal. According, the appeal is dismissed without costs. Consequently, connected miscellaneous petition is closed.

10. The Appellant Transport Corporation is directed to deposit the amount awarded by the Tribunal together with interest, after deducting the amount that has already been deposited, to the credit of MCOP.No.361 of 1999 on the file of the Motor Accident Claims Tribunal (Principal District Court, Tiruvannamalai), within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the respondents 1 to 5 are entitled to their respective shares as apportioned by the Tribunal. The first respondent is permitted to withdraw her respective share along with accrued interest lying to the credit of M.C.O.P.No.361 of 1999 on the file of the Motor Accident Claims Tribunal (Principal District Court, Tiruvannamalai) by filing an appropriate application. The share of the minor claimants (respondents 2 to 5) shall be deposited in any of the Nationalised Bank till they attain majority and the 1st respondent/natural guardian is permitted to

withdraw the interest accrued once in six months.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

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To

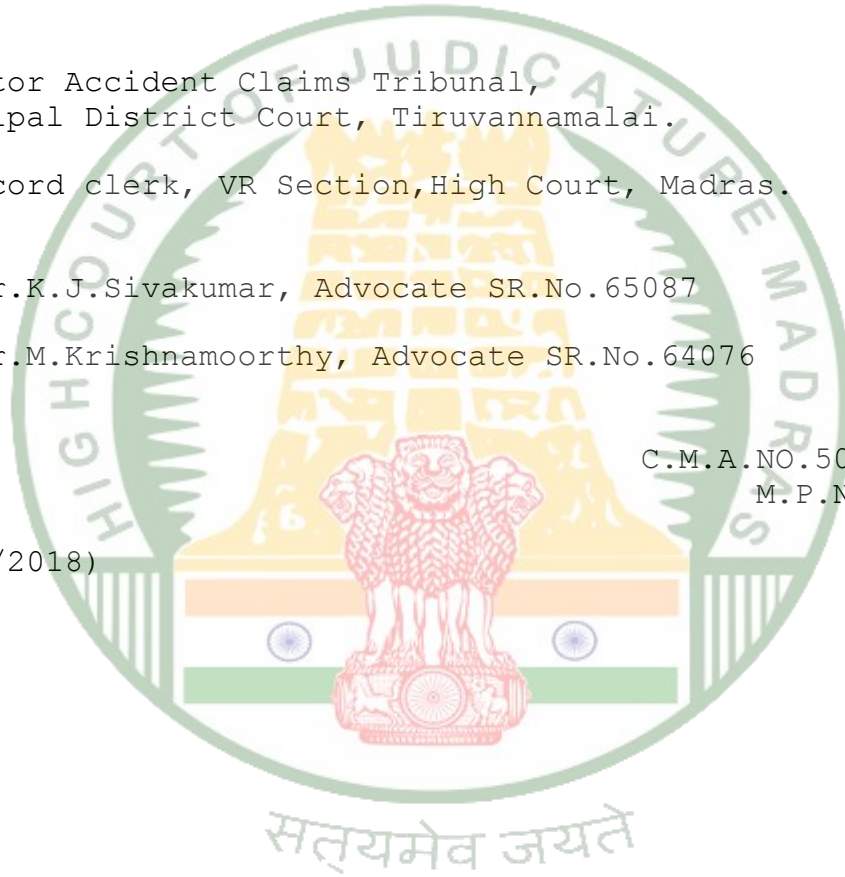
1. The Motor Accident Claims Tribunal,
Principal District Court, Tiruvannamalai.
2. The Record clerk, VR Section, High Court, Madras.

+1cc to Mr.K.J.Sivakumar, Advocate SR.No.65087

+1cc to Mr.M.Krishnamoorthy, Advocate SR.No.64076

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GMV(03/10/2018)



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