

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.10.2018

CORAM

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.M.A.No.3199 of 2017

Tamil Nadu State Transport Corporation
(Villupuram Division III) Ltd., rep by its
Managing Director, Kancheepuram .. Appellant

-vs-

1. M.Jayamma
2. M.Stravani (minor)
(Minor respondent rep by mother and
next friend the first respondent)
3. S.Jayaraj
4. Cholamandalam MS General Insurance Co.Ltd.,
Dare House, 2nd Floor
No.2, NSC Bose Road
Chennai 600 001 .. Respondents

Memorandum of Grounds of Civil Miscellaneous Appeal under
Section 173 of the Motor Vehicles Act, 1988 against the award
and decree dated 09.11.2016 made in M.C.O.P.No.5877 of 2011 on
the file of the Motor Accidents Claims Tribunal/Chief Judge,
Court of Small Causes, Chennai.

For Appellant :: Mr.K.J.Sivakumar

For Respondents :: Mr.Terry Chella Raja for
Mr.N.M.Muthurajan for R1 & R2
Mr.Madhan Kumar for R4

JUDGMENT

(Judgment of the Court was made by R.SUBRAMANIAN, J.)

The Transport Corporation, having suffered an award for
payment of Rs.24,01,568/- for the death of one Srinivasan in a
road accident that occurred on 4.11.2011, has come forward with
this appeal.

2. According to the Claimants, on 4.11.2011, at about 4.15
PM, when the deceased was riding a bi-cycle from Ekkaduthangal
to Guindy along the 100 Feet Road (Jawaharlal Nehru Road), a bus
bearing Registration No.TN-21-N-1293 belonging to the Transport
Corporation, driven in a rash and negligent manner by its
driver, came from behind and dashed against the cyclist and in

turn, it also hit a goods vehicle viz., TATA van bearing Registration No.TN-09-BD-0604. As a result of the accident, the cyclist suffered grievous injuries and died on the same day. Terming the negligence of the bus driver as the cause for the accident, the Claimants sought for compensation. The O.P., was resisted by the Transport Corporation contending that the accident occurred due to parking of the van in a 'No Parking' area, therefore, according to the Corporation, the bus driver was not responsible for the accident. The Tribunal, on appreciation of the evidence, found that the rash and negligent driving of the bus driver was the sole cause for the accident and fastened the entire liability to pay the compensation on the Transport Corporation. The quantum of compensation was arrived at Rs.24,01,568/- by the Tribunal. Aggrieved, the Transport Corporation has come forward with this appeal.

3. The only ground that is canvassed in this appeal is the question of negligence.

4. We have heard Mr.K.J.Sivakumar, learned counsel for the appellant-Transport Corporation, Mr.Terry Chella Raja, learned counsel for the respondents 1 & 2-Claimants and Mr.Madhan Kumar, learned counsel for the fourth respondent insurer of the van. The third respondent, owner of the van, had remained ex parte before the Tribunal and hence, notice to the third respondent is dispensed with.

5. Mr.K.J.Sivakumar, learned counsel for the appellant-Transport Corporation would contend that the parking of the van in a 'No Parking' area had also contributed to the accident. He would also submit that the Tribunal erred in rejecting the evidence of the driver of the bus.

6. Per contra, Mr.Madhan Kumar, learned counsel for the insurer of the van would contend that it is not the case of the Claimants that the van hit against the cyclist. He would submit that the FIR coupled with the evidence of the eye-witness to the accident, namely, P.W.2 would demonstrate that the accident occurred due to the rash and negligent driving of the bus driver.

7. The Tribunal, on consideration of the evidence, had concluded that it is the negligence of the bus driver that has caused the accident. The First Information Report also discloses that the bus driver hit against the cyclist resulting in his death. Though the bus driver has been examined, his evidence was disbelieved by the Tribunal on the ground that he had not lodged a complaint against the van driver.

8. We do not find any reason to interfere with the inference made by the Tribunal on the basis of both oral and documentary evidence adduced before the Tribunal. The fact that the bus hit against the cyclist is not in dispute. We, therefore, see no reason to interfere with the finding of the Tribunal on the question of negligence and thus, the civil miscellaneous appeal is dismissed sustaining the award made by the Tribunal. Consequently, C.M.P.No.19490 of 2017 is also dismissed. No costs.

9. The appellant-Transport Corporation is directed to deposit the award amount, less the amount, if any, already deposited to the credit of the M.C.O.P.No.5877 of 2011 before the Motor Accidents Claims Tribunal, Chief Judge, Court of Small Causes, Chennai within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the first respondent/major claimant is permitted to withdraw her share of the compensation and the share of the minor claimant/second respondent is directed to be invested in an interest earning fixed deposit in any one of the nationalised banks till she attains majority. The first respondent is permitted to withdraw the quarterly interest accrued from the fixed deposit directly.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

ss

To

1. The Motor Accidents Claims Tribunal
Chief Judge
Court of Small Causes
Chennai

+1cc to Mr.N.M.Muthurajan, Advocate SR.NO.68347

+1cc to Mr.K.J.Sivakumar, Advocate SR.NO.68391

JP(CO)

sm:13.11.2018

C.M.A.No.3199 of 2017

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