

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26-11-2018

CORAM

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2497 of 2018
and CMP No.19071 of 2018

The Managing Director,
Tamil Nadu State Corporation Ltd.,
(Coimbatore) Division-II,
Chennai-malai Road,
Erode District. ...Appellant/2nd Respondent

Vs

Thangavel (died)
1.Poongodi ...1st Respondent/2nd Respondent
(amended as per order in
I.A.No.24/2016 dt.07.01.2016)

2.Kasi ...2nd Respondent/1st Respondent

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the award dated 31.01.2017 made in MCOP No.178 of 2013 on the file of the Motor Accident Claims Tribunal, the 1st Additional District Judge, Tiruppur.

For Appellant : Mr.K.J.Sivakumar
For R-1 : Mr.Ma.Pa.Thangavel

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the judgment and decree dated 31.01.2017 made in MCOP No.178 of 2013 on the file of the Motor Accident Claims Tribunal, the 1st Additional District Judge, Tiruppur.

2. By consent of both the parties, this appeal is taken up for final hearing at the admission stage itself.

3. The appellant/Transport Corporation is the second respondent in MCOP No.178 of 2013. The first respondent alongwith her husband filed the above claim petition against the second respondent and appellant claiming a sum of Rs.25,00,000/- as compensation for the death of one Vijayakumar, their son who died in the accident that took place on 23.01.2013.

4. According to the first respondent, the second respondent, driver of the bus belonging to the appellant/Transport corporation drove the vehicle in a rash and negligent manner and dashed against the two-wheeler driven by her son and caused the accident. Due to the injuries sustained by her son, he died. The deceased was aged 20 years at the time of accident and he was working in a company earning a sum of Rs.15,000/- per month. Hence, she filed claim petition alongwith her husband, claiming a sum of Rs.25,00,000/- as compensation for the death of her son.

5. The appellant filed counter statement and denied all the averments made by the first respondent and her husband. According to the appellant, the accident occurred only due to the rash and negligent driving by the deceased. The second respondent is not responsible for the accident.

6. The Tribunal, considering the pleadings, oral and documentary evidence held that the accident occurred only due to the rash and negligent driving by the second respondent and the appellant is liable to pay compensation and awarded compensation under various heads.

7. Against the said award dated 31.01.2017 made in MCOP No.178 of 2013 on the file of the Motor Accident Claims Tribunal, the 1st Additional District Judge, Tiruppur, the appellant has come out with the present appeal.

8. The learned counsel appearing for the appellant/Transport Corporation contended that the Tribunal failed to consider FIR, Ex.P1 and evidence of RW1 in proper perspective. The FIR was lodged only against the deceased. RW1, the driver of the vehicle has stated that on seeing the deceased driving the vehicle in a rash and negligent manner, he stopped the bus and the deceased came and dashed against the bus and invited the accident. PW2 alleged eye-witness has not lodged the complaint. The compensation awarded by the Tribunal under different heads are excessive and prayed for setting aside the award of the Tribunal.

9. Per contra, the learned counsel appearing for the first respondent contended that the second respondent driver of the bus who was examined as RW1 is an interested witness and his evidence cannot be relied on and the Tribunal has held that the second respondent is responsible for the accident, after considering all the materials on record and directed the appellant to pay the compensation. The Tribunal has awarded compensation taking into consideration all the materials on record and directed the appellant/transport corporation to pay the compensation. The amounts awarded by the Tribunal are not excessive and there is no reason to interfere with the award of the Tribunal and prayed for dismissal of the appeal.

10. Heard the learned counsel appearing for the appellant as well as first respondent and perused the materials available on record.

11. From the materials on record, it is seen that Ex.P1 is FIR. The complaint was lodged by the close relative of the deceased. In the FIR, he has stated that the accident occurred only due to the negligence on the part of the driver of the bus driven in a rash and negligent manner. The person who lodged the complaint is not an eye-witness and was not examined by the first respondent. In this case, the second respondent who is the driver of the bus gave evidence as RW1 and he has deposed that he stopped the vehicle as the deceased was driving his two-wheeler in a rash and negligent manner and that the deceased came and dashed against the bus and invited the accident. The Tribunal has not properly appreciated the contents of FIR as well the evidence of RW1.

12. It is no doubt true that the FIR is not the sole document to fix the negligence of the driver. The Tribunal has to appreciate the facts, both oral and documentary let in before the court alongwith FIR to come to a conclusion with regard to the negligence of the drivers. In the present case, considering the evidence of PW2, RW1 and Ex.P1-FIR in its entirety, I hold that the deceased as well as the second respondent herein are equally responsible for the accident. In view of the said finding, the appellant is liable to pay 50% of the compensation awarded by the Tribunal.

13. As far as quantum of compensation is concerned, the Tribunal, in the absence of any evidence with regard to the nature of work and income, fixed the notional income of the deceased at Rs.6000/- per month and the same is reasonable. Considering the fact that the deceased was a bachelor, the Tribunal has rightly deducted $\frac{1}{2}$ towards his personal expenses and adopted multiplier 18 considering the age of deceased as 20 years at the time of accident. The Tribunal has erroneously added 50% enhancement for future prospects while the first respondent is entitled only for 40% addition. For the above reason, the amount awarded by the Tribunal with regard to loss of dependency is modified as follows -

$$6000 + 2400 [40\% \text{ of } 6000] \times 12 \times 18 \times \frac{1}{2} = \text{Rs.}9,07,200/-$$

14. The Tribunal has awarded Rs.50,000/- for loss of love & affection, Rs.25,000/- towards funeral expenses which are excessive and the same are reduced to Rs..40,000/- and Rs.15,000/- respectively. However, the amount of Rs.10,000/- awarded for transportation is confirmed. The Tribunal has not

awarded any amount for loss of estate. Hence, a sum of Rs.15,000/- is granted under this head. Thus, the award of the Tribunal is modified as follows -

Sl. No.	Description	Amount awarded by the Tribunal Rs.	Amount awarded by this Court Rs.	Award Reduced/ Enhanced/ Granted
1.	Loss of dependency	9,72,000/-	9,07,200/-	Reduced
2.	Loss of Love & Affection	50,000/-	40,000/-	Reduced
3.	Funeral expenses	25,000/-	15,000/-	Reduced
4.	Transportation	10,000/-	10,000/-	Confirmed
5.	Loss of Estate	-	15,000/-	Granted
	Total	10,57,000/-	9,87,200/-	Reduced by Rs.69,800/-

50% of Rs.9,87,200/- = Rs.4,93,600/-

15. In the result, the Civil Miscellaneous Appeal is partly allowed modifying the award of the Tribunal from Rs.10,57,000/- to Rs.9,87,200/- alongwith interest @ 7.5% per annum from the date of petition till the date of deposit and fixing the negligence equally on the deceased as well as the second respondent. In view of such finding, the appellant/Transport Corporation is directed to deposit 50% of the modified award amount, now determined by this Court, less the amount already deposited, if any, within a period of twelve weeks from the date of receipt of a copy of this order. On such deposit, the first respondent / claimant is permitted to withdraw the modified award amount, alongwith interest and costs, by making necessary application before the Tribunal. The appellant/Transport Corporation is permitted to withdraw the excess amount, if any, lying in the deposit to the credit of MCOP, if the entire award amount has already been deposited. No costs. Consequently, connected Miscellaneous Petition is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1. The 1st Additional District Judge,
Motor Accident Claims Tribunal,
Tiruppur.

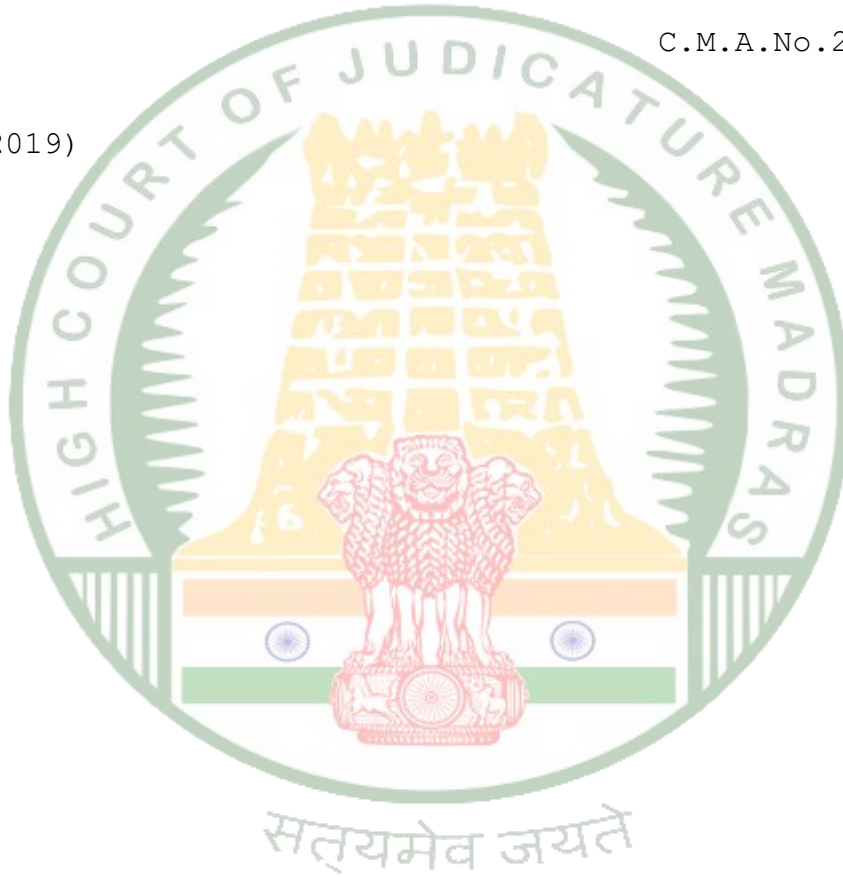
2. The Section officer
VR Section, High Court, Madras 104.(2 copies)

+1 CC to Mr.K.J.Sivakumar, Advocate sr 80378.

+1 CC to Mr.Ma.Pa.Thangavel, Advocate sr 80817.

C.M.A.No.2497 of 2018

KJ(CO)
SP(24/01/2019)



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