

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2809 of 2018
and C.M.P.No.21437 of 2018

Tamil Nadu State Transport Corporation Ltd.,
rep. By its Managing Director,
Salem. Formerly, Anna Transportation
Corporation Ltd., .. Appellant/Respondent
(cause title accepted vide order of
Court dated 21.12.2005, made in
C.M.P.No.20089/2005)

Vs.

1.Periyannan
2.Pavayee
3.P.Loganathan
4.Thilagamani .. Respondents/Claimants

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of
Motor Vehicles Act, against the judgment and decree dated
27.02.2003 made in M.C.O.P.No.1475 of 2002 on the file of the
Sub Court, (Motor Accident Claims Tribunal), Namakkal.

For Appellant : Mr.R.Arunmozhi

For R1 to R3 : Mr.N.Manokaran

J U D G M E N T

The Civil Miscellaneous Appeal is filed against the award
dated 27.02.2003 made in M.C.O.P.No.1475 of 2002 on the file of
the Sub Court, (Motor Accident Claims Tribunal), Namakkal.

2.The appellant is the respondent and respondents are the
petitioners in M.C.O.P.No.1475 of 2002 on the file of the Sub
Court, (Motor Accident Claims Tribunal), Namakkal. The
respondents/claimants filed the said claim petition, claiming a
sum of Rs.5,00,000/- as compensation for the death of one
P.Senthilkumar, son of the respondents 1 and 2 and brother of
the respondents 3 and 4, who died in the accident that occurred
on 04.02.1997.

3. According to the respondents, on 04.02.1997, the deceased, who was working as a conductor in T.S.T No.4 Town bus, was standing in front of the bus which was about to take the trip from Trichengode to Paramathi, and shouting Paramathi, Paramathi. At that time, the driver of the ATC No.1 Town bus drove the bus rash and negligently in reverse direction to stop the vehicle in the pit, without noticing the deceased conductor standing in front of the TST bus, pressed the deceased with the TST Town bus, crushed him and caused the accident. Due to the said impact, the deceased sustained multiple injuries all over his body. According to the respondents, the accident had occurred only due to the rash and negligent driving by the driver of the ATC town bus belonging to the appellant. At the time of accident, the respondent was 25 years old and he was working as a conductor and earning a sum of Rs.3,000/- per month.

4. The appellant-Transport Corporation filed counter statement and denied all the averments made by the respondents. According to the appellant, while the driver of the ATC bus drove the bus in a reverse direction to place the bus in the pit, the deceased suddenly without giving any signal came down from the T.S.T town bus and knocked the A.T.C bus. The deceased caught between the T.S.T bus side luggage carrier and the Corporation bus and sustained injuries. The accident occurred solely due to the negligence on the part of the deceased and therefore, the appellant is not liable to pay compensation to the respondents.

5. Before the Tribunal, on the side of the respondents, 1st respondent examined himself as P.W.1 and examined one Danasekaran, driver of T.S.T town bus as P.W.2 and marked 7 documents as Exs.P1 to P7. On the side of the appellant, one Palanisamy, conductor of the A.T.C bus was examined as R.W.1 and no document was marked as exhibits.

6. The Tribunal after considering the pleadings, oral and documentary evidence, came to the conclusion that the driver of the appellant-Transport Corporation bus was responsible for the said accident and awarded a sum of Rs.2,07,200/- as compensation to the respondents 1 & 2. With respect to respondents 3 & 4, the Tribunal dismissed the claim petition as they are not the dependants of the deceased.

7. Aggrieved by the said award passed by the Tribunal, dated 27.02.2003 made in M.C.O.P.No.1475 of 2002, the appellant-Transport Corporation has filed the present Civil Miscellaneous Appeal.

8.The learned counsel for the appellant contended that the Tribunal erred in holding that the accident occurred solely due to the negligent act of the driver of the appellant, on mere surmises and conjecture, without properly appreciating the evidence on record. The Tribunal ought to have held that due to the negligence on the part of the deceased, the accident occurred and ought to have reduced the compensation. The learned counsel for the appellant contended that there is no corroborative evidence against the Corporation bus driver causing the accident. The Tribunal failed to note that no Police Officer was examined to prove negligence on the part of the bus driver. The Tribunal erred in fixing contributory negligence on the basis of the available evidence on record and hence as per FIR, the Tribunal ought to have fixed entire negligence on the part of the deceased. The Tribunal without properly appreciating the evidence on record, awarded the amounts on the higher side. Therefore, he prayed for setting aside the award passed by the Tribunal.

9.I have heard the learned counsel for the appellant and perused all the materials available on record.

10.The father of the deceased/P.W.1 in his evidence had deposed that while the deceased was standing in front of the T.S.T town bus, the driver of the A.T.C town bus belonging to the appellant-Transport Corporation drove the bus rash and negligently in reverse manner and crushed the deceased. The accident occurred solely due to the negligent act of the driver of the appellant bus. The Tribunal considering the evidence of P.W.1, held that the driver of the bus should have anticipated the movement of the deceased while taking reverse and should have cautiously driven the bus. Moreover, the evidence let in by R.W.2, conductor of the A.T.C bus is not acceptable. The driver of the bus drove the bus in a rash and negligent manner, without noticing the deceased. Therefore, the accident occurred only due to the negligent act of the driver of the bus belonging to the appellant-Transport Corporation. I do not find any error in the reasoning of the Tribunal.

11.As far as the quantum of compensation is concerned, on the date of accident i.e., on 04.02.1997, the deceased was aged 25 years and the multiplier applicable is '17'. Since the claimants 1 and 2/respondents 1 and 2 are the parents of the deceased and the claim is a parental claim, the Tribunal applied the multiplier of '13' considering the age of the mother of the deceased, which is 47 and the same is proper. Though the respondents have submitted that the monthly income of the deceased is Rs.3,000/- and the driver of the A.T.C bus had also deposed to that effect, no evidence has been filed to substantiate the same. Hence, the Tribunal fixed the monthly

income of the deceased at Rs.1,800/-. Deducting 1/3rd towards his personal expenses, a sum of Rs.1,87,200/- (Rs.1,800 x 12 x 13 x 2/3), has been awarded towards loss of income, which is just and reasonable. The Tribunal has awarded a sum of Rs.10,000/- each towards loss of love and affection to the respondents 1 and 2, which is also proper. The Tribunal after considering both oral and documentary evidence, awarded a total sum of Rs.2,07,200/- as compensation to the respondents 1 and 2/claimants 1 and 2. In my considered opinion, the compensation awarded by the Tribunal is just and reasonable. In the above circumstances, this Court is not inclined to interfere with the award passed by the Tribunal.

12. Accordingly, the award passed by the Tribunal is hereby confirmed and the Civil Miscellaneous Appeal is dismissed. The Appellant-Transport Corporation is directed to deposit the award amount along with interest and costs, less the amount deposited, if any, within a period of twelve weeks from the date of receipt of a copy of this judgment. On such deposit, the respondents 1 and 2 are permitted to withdraw their share of the award amount with interest and costs, as per the ratio of apportionment fixed by the Tribunal, after adjusting the amount already withdrawn, if any, by making necessary applications before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

gsa

To

The Subordinate Judge,
(Motor Accident Claims Tribunal), Namakkal.

Copy To:

The Section Officer,
V.R.Section, High Court, Madras.

+1 cc to Mr.R.Arunmozhi, Advocate Sr.No.89178

C.M.A.No.2809 of 2018
and C.M.P.No.21437 of 2018

NR(CO)
CSL/13.03.2019