



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 04.07.2018
CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CMA(MD)No.10 of 2016

and

CMP(MD)No.114 of 2016

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The Managing Director,
Tamil Nadu State Transport Corporation,
New Railway Station Road,
Kumbakonam.

... Appellant

vs.

1) Palanivel
2) Renganayagi
3) Vijayakumar

... Respondents

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree made in MCOP.No.67 of 2015 dated 13.07.2015 on the file of the Motor Accident Claims Tribunal/Chief Judicial Magistrate Court, Thanjavur @ Kumbakonam.

For Appellant : Mr.P.Prabhakaran
For Respondents : Mr.B.Jameel Arasu

JUDGMENT

The present appeal has been filed against the judgment and decree made in MCOP.No.67 of 2015, dated 13.07.2015 on the file of the Motor Accident Claims Tribunal/Chief Judicial Magistrate Court, Thanjavur @ Kumbakonam.

2.It is the case of the respondents/claimants that on 27.08.2010 about 09.45 p.m., one Vijayabalan, son of respondents 1 and 2 and brother of the 3rd respondent, was riding a two wheeler on Kumbakonam-Myladuthurai road. At that time, a goods vehicle bearing registration No.TN-49-T-TMN-4512 belonging to the appellant corporation came in a rash and negligent manner and dashed against him resulting in his instantaneous death. The parents and brother of the deceased made a claim before the Tribunal for compensation of Rs.20,40,000/-. The appellant filed counter denying the involvement of the vehicle stating that the said goods vehicle did not cause any accident and therefore, the appellant is not liable to pay compensation.

3.The Tribunal considering the oral and documentary evidence on either side held that the driver of the goods vehicle belonging to the appellant was responsible for the accident and awarded compensation of Rs.8,04,000/- with 7.5% interest per annum. Aggrieved by the said award, the appellant has filed this appeal



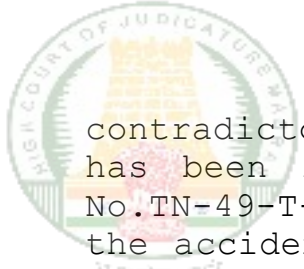
4. Though the appellant filed this appeal challenging liability and quantum, learned counsel for the appellant restricted his submission only to the aspect of liability alone.

5. Learned counsel for the respondents would submit that mother of the deceased/2nd respondent herein examined herself as PW1 and deposed that the above goods vehicle belonging to the appellant driven by its driver in a rash and negligent manner without any horn and light dashed against the deceased. One Iyappan who is an eye-witness to the accident has been examined as PW2, who has deposed that the goods vehicle bearing registration No.TN-49-T-TMN-4512 belonging to the appellant corporation dashed against the deceased and that the driver of the goods vehicle alone had caused the accident.

6. Learned counsel for the appellant would submit that the driver of the goods vehicle bearing registration No.TN-49-T-TMN-4512 who was examined as RW1 has deposed that the said vehicle did not involve in the alleged accident and that the Police after enquiring him, has affirmed that the vehicle driven by him did not cause accident. RW1 has further deposed that the said vehicle had reached Kumbakonam bus stand at 09.15 p.m and there is no connection between the accident and the goods vehicle driven by him. However, during cross examination, he has deposed that on 27.08.2010, accident had occurred, but his vehicle did not cause accident and he did not know how the accident had occurred and at the time of accident, he did not stop the vehicle.

7. Learned counsel for the appellant would further submit that the Inspector of Police/Nagalakshmi who has been examined as RW2, has deposed that after the registration of FIR, final report was filed on 20.05.2012, stating that the vehicle involved in the accident could not be found out. But, in the cross examination, when a suggestion was posed to her that in the diary, whether the vehicle bearing registration No.TN-49-T-TMN-4512 was recorded, she has replied that she had not worked in the police station at the time of accident and in the diary, it was not recorded that the vehicle bearing registration No.TN-49-T-TMN-4512 was found out, but the vehicle could be found out, but they were not able to find the vehicle.

8. From the above, it is very clear that investigation was not properly conducted in the above case and there were contradictory statements by RW1 and RW2. Though RW1 has stated that the vehicle bearing registration No.TN-49-T-TMN-4512 had reached the Kumbakonam bus stand at 09.15 p.m., there is no evidence to show that the vehicle reached the bus stand at 09.15 p.m. It is an admitted fact that the vehicle has passed through the route in which accident had occurred and the evidence of RW1 and RW2 is



contradictory which cannot be relied upon and no other evidence has been let in to show that the vehicle bearing registration No.TN-49-T-TMN-4512 belonging to the appellant did not involve in the accident. Therefore, considering the evidence on the side of the claimants and applying the test of preponderance of probability, the Tribunal fixed negligence on the driver of the goods vehicle bearing registration No.TN-49-T-TMN-4512 belonging to the appellant corporation.

9.Perusal of the impugned judgment shows that the learned Judge relied on the decision in *Kusum Lata and others vs. Satbir and others* reported in 2011 (2) Law Weekly 231, wherein, it has been held as follows:-

'There is no reason why the Tribunal and the High Court would ignore the otherwise reliable evidence of Dheeraj Kumar. In fact, no cogent reason has been assigned either by the Tribunal or by the High Court for discarding the evidence of Dheeraj Kumar. The so-called reason that as the name of the Dheeraj Kumar was not mentioned in the FIR, so it was not possible for Dheeraj Kumar to see the incident is not a proper assessment of the fact situation in this case. It is well known that in a case relating to motor accident claims, the claimants are not required to prove the case as it is required to be done in a criminal trial. The Court must keep this distinction in mind.

Reference in this connection may be made to the decision of this Court in Bimla Devi and others vs. Himachal Road Transport Corporation and others (2009) 13 SCC 5301, in which the relevant observation on this point has been made and which is very pertinent and is quoted below:-

In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied.'

10.The above judgment is squarely applicable to the present case and in view of the above discussion, the impugned judgment of the learned Judge does not warrant any interference.

11.The appellant is directed to deposit the entire award amount with interest and costs, less the amount already deposited, if any, to the credit of the claim petition within a period of six



weeks from the date of receipt of a copy of this judgment. On such deposit, the respondents/claimants are permitted to withdraw their respective shares as apportioned by the Tribunal without filing any formal petition before the Tribunal.

Accordingly, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD-II)

/True Copy/

Sub Assistant Registrar

To

The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Thanjavur @ Kumbakonam.

+1cc to Mr.P.Prabhakaran, Advocate Sr.No.71102
+1cc to Mr.B.Jameel Arasu, Advocate Sr.No.71201

BALA

VB/SKN/RSK/SAR2/17.07.2018/4P/4C

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