



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 18.06.2018

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CMA(MD)No.869 of 2015
and
M.P(MD)No.3 of 2015

The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Coimbatore Division I,
Coimbatore-641 043.

... Appellant/Respondent

vs.

1)Dhanalakshmi ... 1st Respondent/1st Petitioner

2)Minor Pavithra ... 2nd Respondent/2nd Petitioner

3)Minor Nagaraj ... 3rd Respondent/3rd Petitioner

(Minors 2 and 3 represented through their
mother and natural guardian Dhanalakshmi, the
1st respondent herein)

4)Minor Vignesh ... 4th Respondent/4th Petitioner

5)Minor Karthik ... 5th Respondent/5th Petitioner

(Minors 4 and 5 represented through their mother and
natural guardian Manjula, the 6th respondent herein)

6)Manjula ... 6th Respondent/6th Petitioner

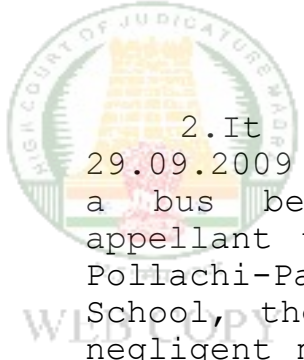
7)Kannammal ... 7th Respondent/7th Petitioner

Appeal filed under Section 173 of the Motor Vehicles Act, 1988,
against the judgment and award made in M.C.O.P.No.526 of 2011 dated
10.07.2014 on the file of Motor Accidents Claims Tribunal, District
Court, Karur.

For Appellant : Mr.D.Sivaraman
For R1 to R7 : Mr.K.Suresh Kumar

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the
judgment and award made in M.C.O.P.No.526 of 2011 dated 10.07.2014
on the file of Motor Accidents Claims Tribunal, District Court,
Karur.



2.It is the case of the respondents/claimants that on 29.09.2009 about 04.45 p.m., the deceased Arumugam was travelling in a bus bearing registration No.TN-38-N-0618 belonging to the appellant transport corporation. While the bus was proceeding on Pollachi-Palladam road near Sinneripalayam Atchaya Matriculation School, the driver of the bus had driven the same in a rash and negligent manner and suddenly applied brake, as a result of which, Arumugam fell down from the bus and sustained head injuries and fractures all over the body. Despite treatment, he died on 12.10.2009. Two wives, daughter, three sons and mother of the deceased filed M.C.O.P.No.526 of 2011 on the file of Motor Accidents Claims Tribunal, District Court, Karur, claiming compensation of Rs.8,00,000/-.

3.The appellant transport corporation filed counter contending that the deceased was in intoxicating mood and while travelling in the bus, he felt vomiting and hence he stepped down to the rear foot board of the bus and while vomiting, he lost balance and fell down thereby invited the accident. Therefore, the driver of the bus was not responsible for the accident.

4.Before the Tribunal, PWs 1 to 3 were examined and Exs.P1 to P4 were marked on the side of the claimants. The duty Conductor was examined as RW1 and no documentary evidence was let in on behalf of the appellant.

5.Upon evaluation of pleadings and evidence, the Tribunal fixed negligence in the ratio of 70:30 as between the driver of the bus and the deceased and awarded compensation of Rs.4,59,900/- with 7.5% interest per annum from the date of petition till the date of deposit. Aggrieved by the said award, the transport corporation has filed this appeal.

6.Though the appellant in the memorandum of appeal has challenged the award of the Tribunal both on negligence and quantum, learned counsel for the appellant restricted his submission only to the aspect of negligence.

7.Perusal of the impugned order shows that PW2 an eye-witness was examined to speak about the manner of accident. He deposed that the driver of the bus driven the same in a rash and negligent manner and suddenly applied brake as a result of which, the deceased Arumugam fell down from the bus. During cross-examination, PW2 denied the suggestion that the deceased was in an intoxicating condition at the time of accident. However, Ex.P1-FIR lodged by PW1 against the Conductor of the bus shows that she has given the complaint alleging that her husband was in an intoxicating condition and while vomiting from the bus by standing on the foot board, he lost balance and one Suresh residing at the opposite house attempted to prevent him from falling down from the bus, but in spite of that, her husband fell down from the bus.



8. Contrary to the evidence of PW2, RW1 who was the duty Conductor at the relevant point of time had deposed that the deceased travelled in the bus in a drunken mood and stepped down to the foot board for vomiting and one Sureshkumar attempted to drag him into the bus, but the deceased while vomiting fell down from the bus and therefore, the deceased alone was responsible for the accident. During cross-examination, RW1 denied the suggestion that the deceased was not in intoxicating mood. Observing that the driver of the bus had not viewed in the left side mirror while driving the bus and he stopped the bus only after raising alarm by the passengers which shows the carelessness of the driver, the Tribunal fixed negligence in the ratio of 70:30 as between the driver of the bus and the deceased.

9. Perusal of the record would show that though in Ex.P1-FIR, the wife of the deceased had stated that at the time of accident, her husband was in intoxicating mood and while vomiting from the bus by standing on the foot board, he lost balance, PW2 who travelled in the bus along with the deceased denied the suggestion put to him that the deceased was in an intoxicating condition at the time of accident. Since the wife of the deceased herself had admitted that at the time of accident, her husband was in intoxicating mood, ends of justice would be met if negligence is fixed in the ratio of 40:60 as between the deceased and the driver of the bus. Accordingly, the award of the Tribunal is modified to the effect that the appellant is liable to pay 60% of the award amount.

10. The appellant is directed to deposit 60% of the compensation amount with interest at 7.5% per annum from the date of claim petition till the date of deposit to the credit of the claim petition within a period of four weeks from the date of receipt of a copy of this judgment, if not deposited already. On such deposit, the major respondents/claimants are permitted to withdraw their shares in the ratio apportioned by the Tribunal. The minors' share shall be deposited in a Nationalised Bank till they attain majority. The interest accruing on the minors' deposit is permitted to be withdrawn by the guardians of the minors once in three months directly from the bank.

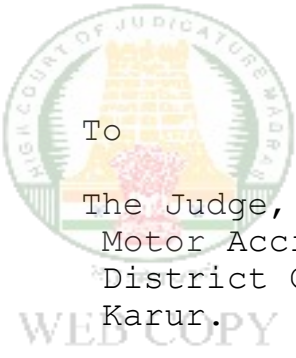
With the above modification, this Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (RTI)

/True copy/

Sub Assistant Registrar



To

The Judge,
Motor Accidents Claims Tribunal,
District Court,
Karur.

Copy to :

The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1cc to Mr.D.Sivaraman, Advocate, SR.No.68585.

+1cc to Mr.K.Suresh Kumar, Advocate, SR.No.68413.

CMA(MD)No.869 of 2015

18.06.2018

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