



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.08.2018

CORAM:

WEB COPY

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A(MD) No.639 of 2018

1.Solaiyan
2.Thayee
3.Anandh

... Appellants/Petitioners

vs.

The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Bye Pass Road,
Madurai-625 010.

... Respondent/Respondent

Prayer: This Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to allow the appeal and modify the award passed in the Judgment and decree, dated 13.12.2017 in M.C.O.P.No.42 of 2014 on the file of Motor Accident Claims Tribunal (Special District Judge, Madurai).

For Appellants : Mr.M.Sarangan

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellants against the Judgment and decree, dated 13.12.2017, made in M.C.O.P.No.42 of 2014, passed by the Motor Accident Claims Tribunal (Special District Judge), Madurai.

2.The appellants/claimants filed a claim petition in MCOP.No.42 of 2014 before the Motor Accident Claims Tribunal (Special District Judge), Madurai, claiming a sum of Rs.10,00,000/- (Rupees Ten Lakhs only) as compensation for the death of one Arunpandian, who is the son of the appellants 1 & 2 and brother of the third respondent.

3.According to the appellants, the accident occurred due to rash and negligent driving by driver of the bus bearing registration No.TN-58-N-1881 belonging to the respondent's Corporation. On the other hand, the respondent contended that the deceased while trying to overtake the Auto, dashed against the said Auto and fell down on the back side of the bus Wheel and the



driver of the bus applied brake and stopped the bus immediately.

4. Based on the pleadings, the Tribunal framed necessary issues and considering the pleadings, oral and documentary evidence held that the accident occurred only due to the rash and negligent driving by driver of the bus belonging to the Transport Corporation and fixed the contributory negligence 15% on the deceased and 85% on the driver of the bus.

5. Considering the income, age and other factors, awarded a total sum of Rs.11,85,000/- (Eleven Lakhs Eighty five Thousand only). The Tribunal took note of the judgement of this Court reported in **2015(2) TNMAC 171 Malika and others vs. Babu** and **2017 (1) TNMAC 423 A.Chithra and others vs. G.A.Sivakumar and others** held that the deceased was not wearing the helmet at the time of accident and accordingly, fixed the contributory negligence at 15%. After reducing compensation of Rs.1,77,750/- towards 15% of contributory negligence, the Tribunal awarded a sum of Rs.10,07,250/- (Rupees Ten Lakhs Seven Thousand Two hundred and fifty only) as compensation to the claimants.

6. Against the said award, the appellants have come out with the present Civil Miscellaneous Appeal, being aggrieved by the 15% reduction towards contributory negligence from the total compensation awarded.

7. The learned counsel appearing for the appellants contended that wearing helmet was made compulsory only with effect from 01.07.2015, as per the decision of this Court. The wearing of helmet is not mandatory for the Two-wheeler till 01.07.2015. The accident occurred in the year 2013. The Tribunal misconstrued the judgment of this Court and erroneously held that the deceased contributed negligence to the accident at 15% as per the judgment. The said contention of the learned counsel for the appellant is not correct. Section 129 of the Motor Vehicles Act, 1988 emphasis the wearing of Head Gear by a person driving or riding a motor cycle of any class or description, while in a public place.

Section 129 of the Motor Vehicles Act reads as follows:-

"129. Wearing of protective headgear- Every person driving or riding (otherwise than in a side car, on a motor cycle of any class or description) shall, while in a public place, wear protective headgear conforming to the standards of Bureau of Indian Standards;

Provided that the provisions of this section shall not apply to a person who is a Sikh, if he is, while driving or riding on the motor cycle, in a public place, wearing a turban:

Provided further that the State Government may, by rules, provide for such exception as it may think fit."



8. This Court considering this provision, which was in the statute held in the judgment referred to above that wearing of helmet is mandatory. This Court did not insert any provision in the Motor Vehicles Act while holding that wearing helmet is mandatory. This Court delivered judgments only based on Section 129 of the Motor Vehicles Act, which made wearing of protective Head Gear by a person driving or riding a motorcycle in a public place. This provision was in Motor Vehicles Act 1988 when the accident occurred on 09.08.2013. In view of Section 129 of the Motor Vehicles Act and judgment of this Court referred to above, there is no error in the award of the Tribunal, warranting interference by this Court.

9. Considering the above facts, the Civil Miscellaneous Appeal is dismissed. No costs.

Sd/-
Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar (CS-II)

To

1. The Special District Judge
Motor Accident Claims Tribunal,
Madurai.
2. The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

AM

TE/SKN/SAR-2 : 11/10/2018 : 3P/4C

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