



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.09.2018

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THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A(MD)No.748 of 2018
and C.M.P.(MD) No.8569 of 2018

Tamil Nadu State Transport Corporation Ltd.,
Rep. by its Managing Director,
Madurai Division,
Bye-pass Road,
Madurai - 10.

...Appellant/Respondent

Vs.

1.P.Muthumalai
2.P.Pooma Devi
3.Oyyandammal

...Respondents/Petitioners

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act against the judgment and decree passed by the Motor Accidents Claims Tribunal, in M.C.O.P.No.164 of 2005 dated 27.04.2007 on the file of the Additional District and Sessions Court, Fast Track Court No.II, Madurai.

For Appellant: Mr.S.Royce Immanuvel

J U D G M E N T

The appellant is the respondent in M.C.O.P.No.164 of 2005. The respondents filed the said Claim Petition for compensation for the death of one Mayakkal in the accident that occurred on 04.07.2004. The respondents are the legal heirs and dependants of the said Mayakkal. According to the respondents on that day, the said Mayakkal travelled in the bus belonging to the appellant. While she was getting down from the bus, the driver of the bus suddenly started the bus at high speed. Due to the same, the said Mayakkal fell down and sustained injuries and subsequently died in the hospital. She was aged about 56 years and was earning a sum of Rs.2,000/- per month working as a Coolie. The accident occurred only due to rash and negligent driving of the driver of the bus belonging to the appellant. Hence, filed the Claim Petition claiming a sum of Rs. 2,00,000/-

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2. The appellant filed counter statement and denied all the



averments and contended that the said Mayakkal before the driver stopped the bus jumped from the front door and fell down and sustained injuries. Therefore, the accident did not occur due to rash and negligent driving of the driver of the bus and prayed for dismissal of the claim petition.

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3. The Tribunal, considering the pleadings and both oral and documentary evidence let in by the parties, held that the accident occurred only due to rash and negligent driving of the driver of the bus belonging to the appellant.

4. Taking the age of the deceased as 70 years as per post-mortem report, the Tribunal fixed income of the deceased at Rs.15,000/- per year and applying the multiplier '5' awarded a sum of Rs. 75,000/- towards loss of income and a sum of Rs.30,000/- towards loss of love and affection and a sum of Rs .3,000/- towards funeral expenses.

5. Against the said award, the present appeal is filed.

6. Heard the learned counsel appearing for the appellant and perused the materials on record.

7. The contention of the learned counsel for the appellant is that the Tribunal failed to appreciate the evidence of R.W.1 the driver of the bus and erroneously accepted the evidence of P.W.1 and P.W.2 and held that the driver of the bus is responsible for the accident. The compensation awarded by the Tribunal also is excessive. Both the contentions are contrary to the evidence on record. P.W.2 is eye witness and she deposed that before the deceased could get down from the bus, the driver started the bus and due to the same, the deceased fell down and sustained injuries. In his evidence, R.W.1 the driver has stated that he did not know whether the Conductor was in the bus, when he started the bus. R.W.1 driver also deposed that after hearing alarm from the passengers, he stopped the bus after a distance of two metres. The appellant did not examine the Conductor of the bus. The Tribunal, considering the above facts, has rightly held that the driver of the bus R.W.1 is responsible for the accident.

8. The Tribunal fixed the notional income of the deceased at Rs.15,000/- per year and applying the multiplier ''5'' awarded Rs.75,000/- towards loss of income. The Tribunal following the judgment reported in 2006 ACJ 992 (**Kamlesh & Others Vs. Rajasthan State Road Transport Corporation and others**) did not deduct any amount towards personal expenses. The amount awarded towards love and affection and funeral expenses is just and proper. In the circumstances, I find no error in the said award.

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9. In the result, this Civil Miscellaneous Appeal is



dismissed. No costs. Consequently, connected C.M.P.(MD) No.8569 of 2018 is also dismissed.

10.The appellant Transport Corporation is directed to deposit the entire award amount with interest and costs to the credit of M.C.O.P.No.164 of 2005 on the file of the Motor Accidents Claims Tribunal, Additional District and Sessions Court, Fast Track Court No.II, Madurai. within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit, the respondents are permitted to withdraw the amount with interest by making necessary application before the Tribunal.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

Sub Assistant Registrar(CS-I)

To

1.The Motor Accidents Claims Tribunal,
Additional District and Sessions Judge,
Fast Track Court No.II, Madurai.

+ 1 CC TO MR.S.ROYCE IMMANUVEL, ADVOCATE IN SR NO.82661

CM

BU/SKN/SAR-I :15.10.10.2018 : 3P/3C

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