

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.06.2019

CORAM:

THE HON'BLE Mr. JUSTICE R.MAHADEVAN

C.M.A.No.1738 of 2004
and C.M.P.No.9475 of 2004

Tamil Nadu State Transport Corporation
(K-Dn.I) Ltd., (Formerly Cholan Roadways Corporation Ltd.)
Rep. by the Managing Director, Kumbakonam ... Appellant/R3
(Cause title accepted vide order dated
07.01.2003 made in CMP No.18966/2003)

...vs...

1. Smt. Ponnukannu
 2. Tamilchelvam
 3. Dhanalakshmi (minor)
 4. Gurumoorthy (minor)
 5. Vanitha (minor)
(R-3 to R-5 Minors rep. by their mother and
next friend, Ponnukannu) ...RR1 to 5/Petitioner
 6. P.Sekar ...R6/R1
 7. National Insurance Co. Ltd.,
No.1, Bharathi Road, II Floor,
NTC Upstairs, Cuddalore - 1
(R-6 exparte before the Tribunal) ...R7/R 2
- C.T.accepted as per order dated 07.01.2003
made in CMP 18966/02

Civil Miscellaneous Appeal filed under Section 173 of the
Motor Vehicles Act, 1988, against the judgment and decree, dated
06.12.2001 made in MCOP No.335 of 1999 on the file of the Motor
Accident Claims Tribunal, Additional District Judge cum Chief
Judicial Magistrate, Cuddalore.

For Appellant : Mr. S.N.Chandrasekar Bharathi

For R-7 : Mr. S.Vadivel.

J U D G M E N T

As against the claim made by the then injured, Mr.V.Ayyavoo for a sum of Rs.7,00,000/-, there is an award for a sum of Rs.2,41,000/-, out of which 70% payable by respondents 1 and 2 (owner of the lorry and Insurance Company) and 30% by the third respondent (Transport Corporation). The injured was in treatment for one year and two months, after the accident and succumbed to the injuries. Hence, the Legal Representatives came on record and the claim made by the injured was bestowed to them. Challenging the quantum of compensation awarded as disproportionate, the Transport Corporation has filed this Appeal.

2. The Tribunal has quantified the compensation with the following breakup details:-

Loss of dependency	-	Rs.2,04,000.00
Medical expenses	-	Rs. 20,000.00
Funeral expenses	-	Rs. 2,000.00
Loss of love and affection	-	Rs. 5,000.00
Loss of consortium	-	Rs. 5,000.00
Mental agony & pain and sufferings	-	Rs. 5,000.00

		Rs.2,41,000.00

3. Brief facts:

On 18.06.1993 at about 01.15 hrs, when the deceased Ayyavoo was travelling in the appellant / Transport Corporation Bus bearing Registration No.TN44-N-0414, as a passenger, the lorry bearing Registration No.TN31-8569 came in the opposite direction rashly, negligently and at a high speed and dashed against the rear portion of the bus, where V.Ayyavoo (original claimant) was seated. Due to the said impact, his right hand was chopped, upto the upper arm. Immediately, he was taken to Government Head Quarters Hospital, Cuddalore, where he was treated for few days and thereafter referred to Thanjavur Medical Hospital, for further treatment. The accident was due to the fault of the drivers of both vehicles. As a result of the accident, there was amputation in the right hand of the original claimant due to which he could not able to do any avocation. So, the original claimant has claimed compensation of Rs.7,00,000/- before the Tribunal.

4. The learned counsel appearing for the appellant / Transport corporation submitted that the fixation of 30% liability on the driver of the Transport Corporation Bus is erroneous, since the accident had occurred only due to the rash and negligent driving of the lorry driver. Hence, the sum of Rs.2,41,000/- awarded as compensation and fixing the 30% liability on the appellant is uncalled for.

5. Despite service of notice, there is no representation for respondents 1 to 6. Heard the learned counsel for the appellant, the learned counsel for the seventh respondent and perused the materials available on records.

6. The questions which fall for consideration in this Appeal are: (i) on whose negligence and carelessness, the accident had happened? (ii) whether the injured Appavoo died due to the injuries sustained in the accident? and (iii) whether the claimants are entitled to the compensation and if so, what amount?

7. To arrive at the conclusion, the Tribunal has examined P.Ws.1, 2 and R.W.1-Driver of the Transport Corporation Bus, apart from marking Exs.P-1 to P-17. Through the relevant documents, the claimants have proved that the death of the original claimant was due to the injuries sustained in the accident. Further, it came to light from Ex.P-12 that septicemia has been formed due to the infection in the amputated bone. The proximity between the injuries sustained in the accident and the death of the deceased was well established. Hence, it was concluded by the Tribunal that the death was connected with the injuries sustained in the accident. This Court finds no reason to take a contra view. Hence, the question (ii), supra, is answered against the appellant herein.

8. Basing reliance upon Ex.P-15-certificate issued by the employer, loss of dependency came to be calculated at Rs.2,04,000/- and the compensation awarded under other heads, being conventional, this Court finds that there is no irregularity committed by the Tribunal in awarding the just compensation. The vicarious liability fixed was also based upon the evidence adduced by the parties. Thus, questions (i) and (iii) are accordingly decided against the appellant.

9. This Court is of the opinion that, no contra evidence, oral or documentary, has been produced either by the appellant herein or by respondents 6 and 7 herein to justify their counter or against the claim made by the claimants. When the award is passed by the Claims Tribunal based on best evidence adduced, this Court cannot modify the same. The judgment and decree of the Tribunal is perfectly valid, sustainable in law, weight of evidence and probabilities of the case. Further, the grounds raised by the Transport Corporation / appellant herein are very vague.

10. Therefore, the Appeal has no merits and thus, the Appeal is dismissed. No costs. Consequently, the connected CMP is closed.

11. The Transport Corporation / appellant herein as well as the Insurance Company / seventh respondent herein are directed to deposit the compensation amount, as proportioned by the Claims Tribunal, along with interests and costs, less the

amount already deposited, if any, within a period of four weeks, from the date of receipt of a copy of this judgment. The ratio of apportionment shall be as ordered by the Claims Tribunal. The minor claimants should have attained majority as on now. Therefore, on such petition being taken out to declare the minor claimants as majors, the claims Tribunal shall pay the compensation to the RTGS Account of the claimants and if not, that share amount shall be deposited in a Nationalised Bank and interest accrued thereon shall be withdrawn by the guardian of the minor claimant. In respect of other claimants also, the same procedure shall be followed.

Sd/-
Assistant Registrar (CS-III)

//True copy//

Sub Assistant Registrar

srk

To

The Additional District Judge cum Chief Judicial Magistrate,
Motor Accident Claims Tribunal, Cuddalore.

Copy To : The Section Officer, V.R. Section,
Madras High Court, Chennai 104

+1cc to Mr.S.Vadivel, Advocate SR.No.46020

C.M.A.No.1738 of 2004
& C.M.P.No.9475 of 2004

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