

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.3678 of 2005
and
C.M.P.No.18548 of 2005

The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
3/137, Salamedu, Vazhuthareddy,
Villupuram. ... Appellant /3rd Respondent

Vs.

1. Kanchanadevi
2. Minor Dhakshana
3. Minor Rakshana
(Minors represented by its next friend/guardian
and mother Kanchanadevi)
4. Saraswathi
5. Ramalingam ...1 to 5 Respondent/Petitioner
6. Mani ...6th Respondent/1st Respondent
(6th respondent given up before the Tribunal)

7. The Oriental Insurance Company Limited.,
179, Easwaran Koil Street,
S.V.Complex, Pondicherry.
...7th Respondent/2nd Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 11.02.2005 made in M.C.O.P.No.734 of 2003 on the file of the Motor Accident Claims Tribunal, (Principal Sub Court), Cuddalore.

For Appellant : Mr.K.J.Shiva Kumar

J U D G M E N T

This appeal is preferred by the appellant Transport Corporation against the judgment and decree dated 11.02.2005 passed by the Motor Accident Claims Tribunal, Principal Sub Court, Cuddalore (for brevity, "the Tribunal") in M.C.O.P.No. 734 of 2003.

2.The respondents 1 to 5, who are the wife, children and parents of one Thirunavukkarasan, filed a claim petition, seeking a sum of Rs.1,00,00,000/- as compensation for the death of the aforesaid Thirunavukkarasan, in an accident that took place on 10.04.2000 about 12.40 hours, while travelling as a passenger in the bus bearing Registration No.TN-32 N 0579 belonging to the appellant Transport Corporation. On consideration of the materials and evidence available on record, the Tribunal concluded that the accident had occurred due to the rash and negligent driving of the drivers of both the bus and the lorry and accordingly fixed the liability on the appellant Transport Corporation and the insurer of the lorry at 50% each and awarded a total compensation of Rs.14,57,500/- with interest at the rate of 9% per annum from the date of petition. Challenging the liability as well as the quantum of compensation awarded by the Tribunal, the appellant Transport Corporation has filed the present Civil Miscellaneous Appeal.

3. The learned counsel for the appellant Transport Corporation contended that the Tribunal failed to note that with respect to the accident, the FIR was registered only against the driver of the lorry and as such, the 50% liability fixed on the appellant Transport Corporation is not sustainable in law. The learned counsel further submitted that the quantum of compensation awarded by the Tribunal is excessive and exorbitant and hence, the same has to be reduced.

4. Heard the learned Counsel for the appellant and perused the materials available on record carefully and meticulously.

5. It is seen that the respondents are not ready in notice. Even though this appeal was admitted and a conditional order of stay was granted way back in the year 2005, the appellant Transport Corporation has not taken proper steps to serve papers to the respondents, even at this length of time. However, considering the fact that the appeal is of the year 2005, this Court is inclined to proceed with the matter on merits.

6. With regard to the finding on negligence, the Tribunal has taken into consideration the evidence of P.W.1/wife of the deceased, who has deposed that on 10.04.2000, about 12.40 hours, the deceased travelled as a passenger in the bus bearing Regn.No.TN32 N 0579; when the bus was proceeding in Thabal Medu Bridge, a Tipper lorry bearing Regn.No.TN04 C 3199 belonging to the six respondent and insured with the seven respondent came from the opposite direction in a rash and negligent manner and dashed against the bus and thereby caused the accident; as a result of the same, the deceased died on the spot. The testimony of P.W.1 was corroborated by P.W.2, who travelled in the bus

involved in the accident as a foot board passenger. According to him, in the said accident, 19 persons died, one among whom is the deceased and the accident occurred on account of the rash and negligent driving of the driver of the tipper lorry. Ex.P1 -FIR was registered based on the complaint given by one Gunasekaran, who was one of the injured in the said accident. Ex.P2-Motor Vehicle Inspector's report shows that the front portion of the Tipper lorry was severely damaged. Ex.P5 Motor vehicle Inspector's report reveals that the right side of the front portion of the bus was damaged. There is no report that the accident had occurred due to the mechanical defect on the part of either of the vehicles. However, no rough sketch was marked by either side. Considering those oral and documentary evidence, the Tribunal has arrived at the conclusion that there was head-on collision between the bus and the tipper lorry and the accident had occurred on account of the negligence of both the drivers of the vehicles and accordingly, directed both the appellant Transport Corporation and the owner/insurer of the Tipper lorry to pay the compensation, jointly and severally. This Court is not inclined to interfere with the said factual finding rendered by the Tribunal.

7.As regards the quantum of compensation, P.W.1/wife of the deceased has asserted in her evidence that the deceased was aged 32 years and was earning a sum of Rs.25,000/- per month by working in a transport company, besides earning Rs.10,000/- by self employment. However, no proof was produced to substantiate the same. In the absence of any evidence, the Tribunal has taken the monthly income of the deceased as Rs.10,000/-, deducted 1/3rd towards personal expenses, arrived at the annual income at Rs.80,000/-, adopted the multiplier of 17 and quantified the compensation under the head "loss of income" at Rs.13,60,000/-. The Tribunal has correctly fixed the income of the deceased, adopted the multiplier and awarded the said sum towards contribution of the deceased to his family and hence, the same is hereby confirmed.

8.That apart, the Tribunal has awarded Rs.50,000/- towards loss of consortium to the wife/first respondent, Rs.10,000/- each towards loss of love and affection to the children/respondents 2 & 3, Rs.10,000/- each towards loss of love and affection to the parents/respondents 4 and 5, besides awarding Rs.5,000/- towards funeral expenses and Rs.2,500/- towards loss of estate, which are just and reasonable and the same warrant no interference at the hands of this Court. There is no dispute with regard to the interest of 9% p.a. awarded by the Tribunal.

9.In the result, this Civil Miscellaneous Appeal is dismissed by confirming the judgment and decree passed by the

Tribunal. No costs. The appellant Transport Corporation is directed to deposit their liability of 50% of the award amount with interest 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. On such deposit being made, the Tribunal shall transfer the same to the respective savings bank account of the respondents 1, 4 and 5, as per the ratio of apportionment made by the Tribunal through RTGS within a period of one week thereafter. In respect of the minor respondents 2 and 3, the Tribunal shall invest the same in a Nationalized Bank in a fixed deposit, till they attain majority and the interest accrued thereon shall be withdrawn by the first respondent/guardian of the minors once in three months. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

The Principal Sub Judge,
Motor Accident Claims Tribunal,
Cuddalore.

Copy to

The Section Officer,
VR Section,
High Court,
Madras.

+1cc ot Mr.K.J.Sivakumar, Advocate Sr.56813

C.M.A.No.3678 of 2005

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