

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.08.2019

CORAM:

THE HON'BLE Mr. JUSTICE R.MAHADEVAN

C.M.A.Nos.2673 of 2008 & 849 of 2009 and
M.P.No.1 of 2008

C.M.A.No.2673 of 2008

The Managing Director
Tamil Nadu State Transport Corporation Ltd
No.12, Ramakrishna Main Road
Salem -7 ..Appellant/3rd Respondent

Vs

1. P.Thangavel
2. Govindan
3. Maadhu ..Respondents R1-3/Petitioners
4. A.Rathinam ..1st Respondent/4th Respondent
5. National Insurance Company Limited
I Floor
No.37/2E, Salem Main Road
Mettur R.S.(Post),
Mettur Circle
Salem - 636 402 ..2nd Respondent/5th Respondent

C.M.A.No.849 of 2009

1. P.Thangavel
2. Govindan
3. Maadhu ..Appellants/Claimants

सत्यमेव जयते
Vs

1. A.Rathinam
2. National Insurance Company Limited
1st Floor, 37/2E Salem Main Road,
Mettur R.S. Post, Mettur Taluk,
Salem District.
3. The Managing Director
Tamil Nadu State Transport Corporation (Salem Division I)
Ltd
No.12 Ramakrishna Road
Salem. ..Respondents/Respondents

Common Prayer: Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree, dated 12.02.2008 made in M.C.O.P.No.24 of 2005 on the file of the Motor Accident Claims Tribunal, Additional District Judge & Special Judge (Essential Commodities Act), Salem.

For Appellants in CMA No. 2673 of 2008 :Mr.B.Venkatachalam
For R5 in CMA No.2673 of 2008 :Mr.D.Bhaskaran
For R2 & R3 :Mr.R.Syed Mustafa

For Appellants in CMA No. 849 of 2009 :Mr.R.Syed Mustafa
For R2 in CMA No.849 of 2009 :Mr.D.Bhaskaran
For R3 in CMA No.849 of 2009 :Mr.B.Venkatachalam

C O M M O N J U D G M E N T

CMA No.2673 of 2008 has been filed by the Transport Corporation as against the award and decree, dated 12.02.2008 made in M.C.O.P.No.24 of 2005 on the file of the Motor Accident Claims Tribunal, Additional District Judge & Special Judge (Essential Commodities Act), Salem. CMA No.849 of 2009 has been filed by the claimants as against the same award and decree.

2.The case in brief, is as follows:

On 30.10.2000, the deceased Poongavanam and her daughter Maadhu purchased tomatoes in bulk from Mecheri Market, for the purpose of retail sales, and loaded the same in the Tempo bearing Reg.No.TN 29 A 9995 and the vehicle was proceeding in the Mecheri - Omalur Main Road. When the vehicle reached near Chinthamaniyur Bus Stop, the bus bearing Reg.No.TN 27 N 1161, belonging to the appellant Transport Corporation in CMA No.2673 of 2008 came from the opposite direction in a rash and negligent manner and all of a sudden, both the vehicles dashed against each other. Due to the said accident, the deceased sustained multiple injuries all over the body and subsequently died. Stating that the accident had occurred due to the rash and negligent driving of the drivers of both the tempo and the bus, the claimants as the legal heirs of the deceased, filed a claim petition before the Tribunal claiming a compensation of Rs.5,00,000/-. Considering the materials and evidence available on record, the Tribunal has awarded a total compensation of Rs.1,90,300/- with interest at the rate of 7.5% per annum from the date of petition to the claimants. The Tribunal has also rendered a finding that the accident had occurred due to the rash and negligent driving of both the drivers of the vehicles and accordingly fixed the liability on the part of the Transport Corporation and the owner of the tempo van, equally. The Tribunal has exonerated the liability on the part of the insurer of the van, on the ground that the owner of the tempo van had violated the policy conditions.

3.Challenging the 50% liability fixed on the Transport Corporation and also challenging the quantum arrived, the Transport Corporation has filed the appeal in C.M.A.No.2673 of 2008 and the claimants have filed the appeal in C.M.A.No.849 of 2009 for enhancement of compensation.

4.The learned counsel for the Transport Corporation has submitted that the Tribunal has erred in coming to the conclusion that the driver of the appellant's bus was also responsible for the accident. It is also submitted that the compensation awarded by the Tribunal is excessive.

5.The learned counsel for the claimants, on the other hand, has submitted that the award of the Tribunal, in so far as the dismissal of the claim petition as against the insurer of the tempo van is contrary to law. It is also submitted that the compensation awarded by the Tribunal is not in consonance with the injuries suffered by the claimant and hence the same requires enhancement.

6.The learned counsel appearing for the 5th respondent Insurance Company in CMA No.2673 of 2008 has submitted that the driver of the Tempo Van allowed more than 20 persons to travel in the said van by violating the policy conditions and hence, the Tribunal has rightly fastened 50% liability on the owner of the Tempo Van, which does not require any interference by this Court.

7.The daughter of the deceased was examined as P.W.1 before the Tribunal. She deposed that she travelled along with her mother in the tempo van in question and that the accident had occurred due to the rash and negligent driving of the drivers of both the bus and the tempo van. Further, Ex.P.1 First Information Report reveals that a case has been registered against the driver of the Tempo van. Considering the materials and evidence, the Tribunal has rightly fixed the liability on the part of the Transport Corporation and the owner of the tempo van, equally, exonerating the insurer of the tempo van.

8.With regard to compensation, the Tribunal has awarded a sum of Rs.1,72,800/- towards loss of income, Rs.2,500/- towards funeral expenses and Rs.15,000/- towards loss of love and affection, totalling to Rs.1,90,300/-. The Tribunal has relied upon the exhibits, evidence of witnesses and all other aspects in a proper perspective and has awarded the above amounts under various heads to the claimants. Further, this Court is of the considered view that the amounts awarded towards these heads are reasonable and justifiable and hence the same are confirmed.

9.In the result, affirming the award of the Tribunal, these Civil Miscellaneous Appeals are dismissed. No costs. The appellant / Transport Corporation and Insurance Company shall deposit their share of compensation along with proportionate interest and costs, as awarded by the Claims Tribunal, 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, all the claimants are permitted to withdraw their respective shares, on making proper application before the Tribunal. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

vrn

To

1. The Motor Accident Claims Tribunal
Additional District Judge & Special Judge (Essential
Commodities Act),
Salem

2. The Section Officer
V.R.Section
Madras High Court
Chennai 104

+1cc to Mr.D.Bhaskaran, Advocate SR.No.69138

+1cc to Mr.D.Venkatachalam, Advocate SR.No.68906

+1cc to Mr.M.R.Thangavel, Advocate SR.No.69153

C.M.A.Nos. 2673 of 2008 & 849 of 2009 and
M.P.No.1 of 2008

CNR (CO)
GMY (20/11/2020)

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