

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 30.01.2019
CORAM
THE HONOURABLE MRS. JUSTICE R. HEMALATHA
C.M.A.NO.1183 OF 2011

1. Rathanal
2. Minor Sakthivel
Rep. By Natural Guardian & mother
Rathanal

...Appellants/ Petitioner /Claimants

Vs.

- 1.M.M.Madheswaran
2. Tamilnadu State Transport Corporation
(Coimbatore Division) Ltd.
Rep. By its Managing Director
Chennimalai Road
Erode 638 001

...Respondents/ Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the fair and decreetal order dated 13.09.2010, passed in M.C.O.P. No.32 of 2009 on the file of the II Additional Subordinate Judge, Motor Accidents Claim Tribunal, Erode.

For Appellant : Mr.K.Govi Ganesan
For Respondents : Mr.S.V.Vasantha Kumar for R2

R1 - exparte before the Tribunal

JUDGMENT

The appellants are the claimants 1 and 2 in M.C.O.P. No.32 of 2009 on the file of the II Additional Subordinate Judge, Motor Accident Claims Tribunal, Erode.

2.The appellants filed the claim petition under Section 163-A of Motor Vehicles Act, seeking compensation of Rs.4,00,000/- for the death of one Perumal, in a road accident that took place on 03.08.2008. The contention of the claimant is that when the deceased was alighting the Government bus bearing registration No. TN 33N 1458 belonging to the second respondent, the driver of the bus started moving the bus without noticing the deceased alighting from the bus, as a result of which the deceased fell down and sustained a severe head injury. It is further contended by them that the deceased was immediately rushed to a nearby private hospital at Thavittupalayam from where he was referred to Government Hospital at Anthiyur and however he succumbed to injuries

on 04.08.2008. According to the claimants the rash and negligent driving of the driver of the bus bearing registration No. TN 33N 1458 was the cause of the accident and hence the Tamilnadu State Transport Corporation is liable to pay compensation of Rs.4,00,000/- to them.

3. The first respondent/driver of the bus remained absent before the tribunal and hence he was set exparte. The second respondent/ The Tamilnadu State Transport Corporation Limited contested the claim petition.

4. The learned II Additional Subordinate Judge, while awarding a compensation of Rs.3,21,500/- to the claimants, deducted 50% towards contributory negligence on the part of the deceased since he was found to be intoxicated at the time of accident.

5. Aggrieved over the orders passed by the tribunal, the appellants/claimants have filed the present appeal.

6. Mr.K.Govi Ganesan, learned counsel appearing for the appellants would contend that though in the Accident Register it is mentioned that the the deceased was intoxicated at the time of accident, nothing is mentioned in the post mortem certificate(Ex.P2) that the deceased Perumal was intoxicated. It is therefore, contended that the tribunal was wrong in deducting 50% towards contributory negligence.

7. Per contra, Mr.S.V.Vasantha Kumar, learned counsel appearing for the Tamilnadu State Transport Corporation would contend that the tribunal has rightly deducted 50% towards contributory negligence since the deceased was found to be intoxicated and that this is also reflected in the FIR, which was registered immediately after the accident.

8. A perusal of the records shows that the appellants/claimants filed the claim Petition only under Section 163A of Motor Vehicles Act 1988 and the Tamilnadu State Transport Corporation Limited cannot plead any negligence on the part of the deceased. It is also seen from the post mortem certificate (Ex.P2) that the deceased was not intoxicated at the time of accident and in any event, the tribunal was wrong in deducting 50% towards contributory negligence especially when the claim petition was filed under 163A of Motor Vehicles Act, 1988.

9. As far as the quantum of compensation is concerned, though it is claimed in the claim petition that the deceased was earning a sum of Rs.4,000/- per month, the tribunal has fixed the monthly income as Rs.3,000/- since no documentary evidence was adduced.

Since the age of the deceased was 50 years at the time of accident, the proper multiplier is 13. Thus, the loss of dependency is calculated, after deducting 1/3rd towards personal expenses as

3000 x 12 x 13 less 1/3rd deduction = Rs.3,12,000/-.
The award passed by the Tribunal under various heads is extracted hereunder.

Sl.No	Head	Amount (Rs.)
1.	Loss of dependency (Rs.24,000/- X 13)	3,12,000/-
2.	Funeral expenses	2,000/-
3.	Loss of consortium	5,000/-
4.	Loss of estate	2,500/-
	Total	3,21,500/-

10. In the facts and circumstances, I do not see any reason to interfere with the award passed by the tribunal. However, as already observed, the tribunal was wrong in fixing the contributory negligence on the part of the deceased and therefore, that part of the order of the tribunal is liable to be set aside.

11. In the result,

(i) The appeal filed by the appellants/claimants is partly allowed. No costs.

(ii) The award passed by the tribunal deducting 50% of the compensation amount towards contributory negligence on the part of the deceased is set aside.

(iii) The Second respondent / Tamilnadu State Transport Corporation Limited is directed to pay the entire compensation amount of Rs.3,21,500/- to the claimants together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, less the amount already deposited by them, within four weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made by the second respondent, the claimants are entitled to withdraw the same as per the apportionment made by the tribunal, after following due process of law.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

bga
To

The II Additional Subordinate Judge,
Motor Accidents Claim Tribunal, Erode.

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

+1cc to Mr.S.V.Vasantha Kumar , Advocate SR.No. 7638

+1cc to Mr.K.Govi Ganesan , Advocate SR.No. 7890

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A.SK(11/06/2019)



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