

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.07.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.NO.824 OF 2009

AND

M.P.NO.1 OF 2009

The Tamilnadu State
Transport Corporation Limited
Rep. by its Managing Director,
No.37, Mettupalayam Road,
Coimbatore.

...Appellant/Respondent No.4

Vs.

1.Chithra Devi
2.Minor Gayathri
3.Raman alias Ramasamy
4.Minor Karunakaran

... Respondent 1 to 4/Claimants

(Respondents 2 and 4 are represented by
their mother and natural guardian Chithra Devi)

5.Kalaiselvan

6.R.Sasikala

7.The New India Assurance Company Limited,
Anicode, Chittur,
Kerala State.

...Respondents 5 to 7/Respondents 1 to 3

Prayer:-

Appeal under Section 173 of the Motor Vehicles Act against
the judgment and decree dated 28.03.2008 made in MCOP.No.269 of
2004 on the file of the Motor Accidents Claims Tribunal cum
Subordinate Judge, Pollachi.

For Appellant : Mr.V.Ramesh

For Respondents : Mr.M.Parthasarathy
(for R1 to R4)

JUDGMENT

The case in brief, is as follows:

On the fateful day, i.e., on 13.10.2004, at about 11.40 a.m., the deceased Rajendiran was driving his TVS 50 moped bearing Reg.No.TN-41-C-1937 in the Kottur Pollachi Main Road from South to North direction. When he was nearing Thangam Theatre, a tanker van bearing Reg.No.TN 41 M 1651 came in a rash and negligent manner and dashed against the TVS 50 moped. Due to the impact, the deceased was thrown out and fell into the back wheel of the bus bearing Reg.No.TN-37-N-0653 belonging to the appellant Transport Corporation. Though the driver of the bus applied the brakes, he was not able to stop the bus, due to which the deceased was dragged on to some distance. As a result of the same, the deceased sustained grievous injuries all over the body. Immediately, the deceased was taken to the Pollachi Government Hospital. Despite treatment, he died. The legal heirs of the deceased filed a claim petition before the Tribunal. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.5,44,000/- with interest at the rate of 7.5% per annum from the date of petition and directed the appellant Transport Corporation to pay 25% of the said sum, fixing 25% negligence on the part of the driver of the bus.

2.Challenging the same, the appellant Transport Corporation has filed the present Civil Miscellaneous Appeal.

3.The learned counsel for the appellant Transport Corporation has submitted that the Tribunal has erred in holding that the driver of the bus was also responsible for the accident. It is also submitted that the compensation awarded by the Tribunal is excessive.

4.The learned counsel for the respondents 1 to 4 / claimants has submitted that the Tribunal has properly considered the materials and evidence on record, and has granted the compensation, which is just, fair and reasonable and hence the same need not be interfered with by this Court.

5.Heard the learned counsel on either side and perused the materials available on record carefully and meticulously.

6.P.W.2 is the eye-witness to the occurrence. He deposed before the Tribunal that on the date of accident at about 11.40 a.m., when he was talking with his friend in the Auto Stand opposite to Thangam Theatre in the Pollachi - Kottur Road, he saw the TVS-50 two-wheeler in question proceeding from Samba Gounder Colony from West to East direction and taking a turn in the Pollachi - Kottur Road and at that time, the water tanker van in question came from North to South direction in a rash and negligent manner and dashed against the TVS-50 two-wheeler and due to the impact, the deceased was thrown away. He also deposed that the driver of the bus had driven it in a rash and negligent manner and ran over the deceased who fell on the road. Considering the materials and evidence available on record, the Tribunal observed that the deceased was going well within the western part of the road and hence it is clear that the deceased had not overtaken the bus on the right side. It is also clear that the drivers of the tanker van and the bus were rash and negligent in driving the vehicles. In the circumstances, fixing 75% negligence on their part, the Tribunal has fixed 25% negligence on the part of the driver of the bus and accordingly fastened 25% liability on the appellant Transport Corporation. This Court is not inclined to interfere with the said factual finding arrived at by the Tribunal.

7. With regard to the quantum of compensation, the Tribunal has awarded a sum of Rs.5,12,064/- towards pecuniary loss, Rs.20,000/- towards loss of love and affection and consortium, Rs.5,000/- towards mental agony and loss of happiness, Rs.5000/- towards funeral expenses, Rs.1,000/- towards transport expenses and Rs.1,000/- towards damage to clothes and articles. The Tribunal has relied upon the exhibits, evidence of witnesses and also taken note of the II Schedule of the Motor Vehicles Act 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.

8. In the result, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected miscellaneous petition is closed. The appellant Transport Corporation is directed to deposit the award amount with interest and costs, as ordered by the Tribunal, after deducting the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the major claimants are permitted to withdraw their respective shares on making proper application before the Tribunal. The shares of the minor respondents 2 and 4 shall be deposited in a fixed deposit

in any one of the Nationalised Banks till they attain majority. The interest accrued in the bank deposit, shall be withdrawn by the first respondent -mother of the minors, once in three months directly from the bank, which shall be used for the benefit and welfare of the minors.

Sd/-
Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

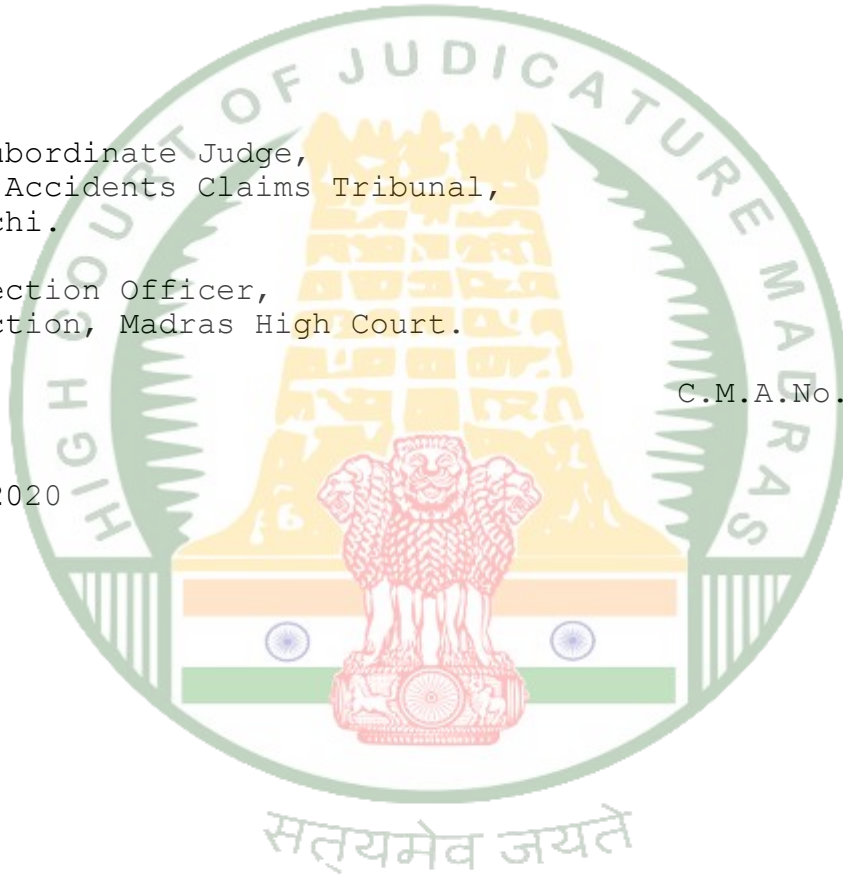
gv

To

1. The Subordinate Judge,
Motor Accidents Claims Tribunal,
Pollachi.
2. The Section Officer,
VR Section, Madras High Court.

C.M.A.No.824 of 2009

TM(CO)
CS/11/12/2020



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