

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.08.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.1664 of 2011

and M.P.No.1 of 2011

and M.P.No.1 of 2013

The Managing Director,
Tamil Nadu State Transport Corporation,
(Coimbatore Division II) Erode,
Chennimalai Road, Erode. Appellant/ Respondent

Vs.

1.K.S.Palanisamy (Died)
2.P.Kamalam
3.P.Sathisprabu
4.S.Nallammal ... Respondents 2 to 4/Claimants
5.P.Thangavelu5th Respondents/1st respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award made in M.C.O.P.No.12 of 2010 dated 10.03.2010 on the file of the Motor Accidents Claims Tribunal and Chief Judicial Magistrate, Erode.

For Appellant : Mr.S.V.Vasanthakumar

For Respondents 2 to 4 : Mr.V.Raghunathan
for Mr.S.Dhanasekaran

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the order and decree dated 10.03.2010 passed by the Motor Vehicles Accident Claims Tribunal and Chief Judicial Magistrate, Erode, in M.C.O.P.No.12 of 2010.

2.The case in brief is as follows:

On 20.09.2005 at about 11.15 a.m., the 1st respondent/Junior Engineer in Sivagiri Electricity Distribution Circle, was travelling in the TNSTC Town Bus Route No.42 bearing Registration No.TN 33 N 1048 from Sivagiri to Erode, to attend a meeting at the office of the Executive Engineer, Department of Electricity, Erode. At that time, the driver of the bus drove the vehicle in a rash and negligent manner and suddenly applied break, due to which, the first respondent, who was standing near the front door of the bus, was thrown away from the vehicle and

the back side wheel of the bus ran over his right leg. Due to the said impact, his right leg above knee was amputated, besides receiving mental shock. Claiming a sum of Rs.25,00,000/- as compensation, the first respondent filed a claim petition, stating that the accident had occurred due to the rash and negligent act on the part of the driver of the bus. During the pending of the same, he died on 26.06.2008 and the claim petition was contested by the respondents 2 to 4 being his surviving legal heirs. The Tribunal, on analysis of the entire oral and documentary evidence, awarded a total compensation of Rs.4,56,200/-. Aggrieved over the same, the appellant Transport Corporation has preferred this appeal.

3.The learned counsel for the appellant Transport Corporation submitted that the first respondent himself fell down from the bus and received crush and grievous injuries and thereby, invited the accident. Whereas, the Tribunal erred in giving a finding that the accident had occurred due to the rash and negligent driving of the driver of the bus. She further submitted that the compensation of Rs.4,56,200/- awarded by the Tribunal is excessive and exorbitant and hence, the same has to be reduced substantially.

4.Per Contra, the learned counsel for the respondents/claimants submitted that the Tribunal, after examining the oral and documentary evidence, has rendered its findings on negligence and liability and awarded the just compensation and hence, the same do not require any interference at the hands of this Court.

5.Heard both sides and perused the records.

6.The respondents/claimants, to substantiate their claim, produced Exs.P1-FIR, P2-rough sketch, P3-Observation mahazar, P4-motor vehicle inspector's report, besides examining the second respondent/wife of the first respondent and two other witnesses. The evidence of P.W.1 was that the accident had occurred due to the rash and negligent act on the part of the driver of the bus, the first respondent was thrown away from the bus and the backside wheel of the vehicle ran over his leg and he later on, succumbed to the injuries. The same was corroborated by the deposition of P.W.3. On the other hand, it was contended on the side of the appellant transport corporation that the first respondent himself fell down from the bus and invited the accident and hence, there was contributory negligence on his part also. To defend their stand, the conductor of the bus was examined as R.W.1. However, no document was marked. Further, the driver of the bus, who is the competent person to narrate the manner of the accident, was not examined. Hence, the Tribunal, based on the materials and evidence available on record, has rightly rendered its findings on

negligence and liability on the appellant transport corporation, which this Court is not inclined to interfere.

7.As regards the quantum of compensation, the Tribunal, after taking note of the fact that during the pendency of the claim petition, the first respondent/injured/victim died and also in the light of the decision of this Court in 2000 (4) CTC 528, has relied on Ex.P5 wound certificate, Exs.P10 and P11- medical bills and Ex.P13 medical certificate and has awarded a total compensation of Rs.4,56,200/-, which, in the opinion of this Court, is just and reasonable and hence, the same need not be interfered.

8.In the result, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petitions are closed. The appellant / transport corporation is directed to deposit the award amount as ordered by the Tribunal, after deducting the amount if any already deposited, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the amount lying in the deposit to the respective bank accounts of the respondents 2 to 4, as per the ratio of apportionment made by the Tribunal, through RTGS, within a period of one week thereafter.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

rna/rk
To

1.The Motor Accidents Claims Tribunal,
Chief Judicial Magistrate,
Erode.

2.The Section Officer,
V.R. Section,
High Court, Madras.

+1cc to Mr.v.Raghunathan , Advocate SR.No. 70809

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A.SK(02/03/2020)