

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.01.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.2348 to 2350 of 2015
and M.P.Nos.1,1,1 of 2015

The Managing Director,
Tamil Nadu State Transport
Corporation (Villupuram) Limited,
No.3/137, Salamedu,
Vazhuthareddy,
Villupuram - 605 602. ... Appellant in all C.M.As

Vs.

1.Kannan
2.Minor Balabarathi
3.Minor Vasantharaj
(Minors rep by father Kannan) ... Respondents in
C.M.A.No.2348 of 2015

1.Kannan
2.Minor Balabarathi
3.Minor Vasantharaj
4.Dhanalatchmy
(Minors rep by father Kannan) ... Respondents in
C.M.A.No.2349 of 2015

Aranganathan ... Respondent in
C.M.A.No.2350 of 2015

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 28.02.2014 made in M.C.O.P.Nos.1689 to 1691 of 2010 on the file of Motor Accidents Claims Tribunal, Principal District Court, Cuddalore.

For Appellant : Mr.K.J.Sivakumar

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

These Civil Miscellaneous Appeals have been filed against the common award dated 28.02.2014 made in M.C.O.P.Nos.1689 to 1691 of 2010 on the file of Motor Accidents Claims Tribunal, Principal District Court, Cuddalore.

2.All the appeals arise out of the same accident and common award and hence, they are disposed of by this common Judgment.

3.Heard the learned counsel appearing for the appellant and perused the materials available on record.

4.The appellant is the respondent in M.C.O.P.Nos.1689 to 1691 of 2010 on the file of Motor Accidents Claims Tribunal, The Principal District Judge, Cuddalore. The respondents in C.M.A.Nos.2348 to 2349 of 2015 have filed claim petitions in M.C.O.P.Nos.1689 and 1690 of 2010 claiming a sum of Rs.5,00,000/- and Rs.10,00,000/- as compensation for the death of Jeeva Barathi and Latha respectively who died in the accident that took place on 11.10.2009. The respondent in C.M.A.No.2350 of 2015 filed the claim petition in M.C.O.P.No.1691 of 2010 for the injuries sustained by him in the accident that took place on 11.10.2009.

5.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the bus belonging to the appellant-Transport Corporation and directed the appellant-Transport Corporation to pay a sum of Rs.3,00,000/-, Rs.7,30,000/- and Rs.2,31,620/- respectively as compensation to the respondents in C.M.A.Nos.2348 to 2350 of 2015. Challenging the said award dated 28.02.2014 made in M.C.O.P.Nos.1689 to 1691 of 2010 granting compensation to the respondents, the appellant-Transport Corporation has come out with the present appeals.

6.The contention of the learned counsel appearing for the appellant-Transport Corporation is that the Tribunal erred in fixing negligence on the part of the driver of the bus belonging to the appellant-Transport Corporation and liability on the appellant-Transport Corporation by merely relying upon the evidence of PW1 who is an interested witness and Ex.P1-FIR and awarded excess amount as compensation. The above contentions are without merits. From the materials on record, it is seen that in the absence of any rebuttable evidence let in by the appellant to disprove the contention of the respondents the Tribunal considered the evidence of P.W.2, who is an injured eye-witness, Ex.P1/copy of F.I.R. and Ex.P2/copy of Motor Vehicle Inspector's report and held that the accident occurred only due to rash and negligent driving by the driver of the appellant-Transport Corporation bus. I do not find any error in the said finding of the Tribunal.

7.As far as quantum of compensation in C.M.A.No.2348 of 2015 is concerned, the Tribunal relying on the judgment of this Court reported in 2012(2) TNMAC page 843; [N.R.Buhari Naleem @ Buhari

and others Vs. P.Manickam and others], awarded a sum of Rs.3,00,000/- as total compensation for the deceased minor aged about 2 years, which is not excessive.

8.As far as C.M.A.No.2349 of 2015 is concerned, the Tribunal fixed the age of the deceased as 30 years as per Ex.P3/postmortem report. In the absence of any document to prove the income of the deceased, Tribunal fixed a sum of Rs.5,000/- as notional income per month, deducted 1/3rd towards her personal expenses, applied multiplier of '17' and awarded a sum of Rs.6,80,000/- towards loss of income. The Tribunal considered entire materials on record and awarded a total sum of Rs.7,30,000/- as compensation to the respondents/claimants which is not excessive.

9.As far as the injured respondent in C.M.A.No.2350 of 2015 is concerned, P.W.2/Doctor certified percentage of disability suffered by the respondent as 30%. The Tribunal fixed a sum of Rs.5,000/- per month as the notional income of the respondent in the absence of any documentary evidence. The Tribunal fixed the age of the respondent as 53 years as per Ex.P12/copy of driving license, applied multiplier of '11' and awarded a sum of Rs.1,98,000/- towards permanent disability. The Tribunal after considering the entire materials on record, awarded a total sum of Rs.2,31,621/- as compensation to the respondent/claimant.

10.In my considered view, the amounts awarded by the Tribunal under different heads as compensation to respondents in C.M.A.Nos.2348 to 2350 of 2015 are just compensation and are not excessive. I do not find any error in the award of the Tribunal warranting interference by this Court.

11.In the result, these Civil Miscellaneous Appeal are dismissed and sum of Rs.3,00,000/-, Rs.7,30,000/- and Rs.2,31,620/- respectively awarded by the Tribunal as compensation to the respondents in C.M.A.Nos.2348 to 2350 of 2015, along with interest and costs are confirmed. The appellant-Transport Corporation is directed to deposit the respective award amount along with interest and costs, less the amount already deposited, if any, within a period of twelve weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.Nos.1689 to 1691 of 2010. On such deposit, the first respondent in C.M.A.No.2348 of 2015, the first and fourth respondent in C.M.A.No.2349 of 2015 and the respondent in C.M.A.No.2350 of 2015 are permitted to withdraw their respective share of the award amount as per the ratio of apportionment fixed by the Tribunal, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. The shares of the minor respondents 2 and 3 in C.M.A.Nos.2348 and 2349 of 2015 are

directed to be deposited in any one of the Nationalized Bank till they attain majority. The first respondent being the father of the minor respondents 2 and 3 in C.M.A.Nos.2348 and 2349 of 2015 is permitted to withdraw the accrued interest once in three months for the welfare of the minor respondents 2 and 3. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

The Principal District Judge,
Motor Accidents Claims Tribunal,
Cuddalore.

Copy to

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

+3ccs to Mr.K.J.Sivakumar, Advocate Sr.7034, 7035, 7036

C.M.A.Nos.2348 to 2350 of 2015
and M.P.Nos.1,1,1 of 2015

nrl[co]
srg 20/05/2019

WEB COPY