

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.09.2019

CORAM :

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.NO.360 OF 2015

AND

M.P.NO.1 OF 2015

The Divisional Manager,
The New India Assurance Co.Ltd.,
Motor 3rd party Claims Office,
No.69, 70, Sheikpet Nadu Street,
Kanchipuram-631 501. ... Appellant/2nd Respondent

-vs-

1. Prema,
W/o.Late Karthikeyan
2. Thilagam,
W/o.Thangavel
3. Thangavel,
S/o.Subramani ... Respondents 1 to 3/Claimants
4. The Correspondent,
Arulmighu Meenakshi Amman College of
Engineering (owner of the Vehicle)
Vadamanavandal,
Near Kancheepuram-604 407,
Cheyyar Taluk,
Thiruvannamalai District. ... 4th Respondent/
1st Respondent

APPEAL under Section 173 of the Motor Vehicles Act, 1988 to set aside the award and decree dated 19.08.2014 made in M.C.O.P.No.82 of 2011 on the file of the Motor Accident Claims Tribunal, Kanchipuram (District Court-II, Kanchipuram).

For Appellant :Mr.A.Devanathan

For Respondent 1-3 :Mr.V.M.Venkatraman

JUDGMENT

This civil miscellaneous appeal has been preferred by the Insurance Company/appellant aggrieved against the award and decree dated 19.08.2014, made in M.C.O.P.No.82 of 2011 on the file of the Motor Accident Claims Tribunal, Kanchipuram (District Court-II, Kanchipuram).

2.The brief facts of the case are as follows:-

On 31.03.2011, at about 08.45 hours, the deceased traveled in the 4th respondent's bus bearing Regn. No.TN 25-T-3786 from Kancheepuram to the College along with the other staff and students. While the bus was nearing Abdulahpuram Main Road, the driver of the bus drove the same in a rash and negligent manner, in an uncontrolled manner and on seeing the lorry came on the opposite side, the driver of the bus without slowing the bus, turned the vehicle to the extreme left and hit on the electric post and caused the accident. Due to the accident, the deceased sustained grievous injuries all over the body and died on the spot. The accident had occurred only due to the rash and negligent act of the driver of the 4th respondent's bus. A criminal case had been lodged against the driver of the bus by the Doosi Police Station, Tiruvannamalai District in Cr.No.110/2011. Respondents 1 to 3/claimants are the legal heirs of the deceased. The 4th respondent is the owner of the bus, is vicariously liable and the appellant is the insurer of the 4th respondent's vehicle. Thus, the appellant and the 4th respondents are liable to pay compensation to respondents 1 to 3.

3.The brief averments in the counter affidavit filed by the Insurance Company are as follows:-

The claim petition is false, frivolous and unsustainable both in law and on facts. This respondent denies all the allegations in the claim petition except those which are admitted. The nature and manner of accident narrated by respondents 1 to 3 are denied as false. There is no rashness or negligence on the part of the driver of the bus. The insured vehicle is a bus to transport students numbering 55 to the college from various places in Kancheepuram town. As per the RC and the permit issued by the Regional Transport Authority, Thiruvannamalai dated 30.06.2008, the bus is permitted to transport 55 students only to the college. The insurance policy also stipulates that only 55 passengers should be transported and the policy covers only 55 persons. As per the FIR and statements of other witnesses, more than 55 persons traveled in the bus. The deceased and others namely, Velmurugan and Vijayan were standing in the rear foot board of the bus with their bodies protruding outside the bus and when the bus went very close to the EB post,

their bodies dashed against the post. The foot board passengers sustained injuries only because of their bodies were protruding outside the bus. They would not have sustained any injury, if they have kept their bodies within the bus. There is violation of the permit and policy conditions that there was more than 75 passengers in the bus at that time of accident. Hence, the Insurance Company is not liable for any compensation. In any event, the compensation claimed is highly excessive.

4. The Tribunal upon considering the evidence and documents, has concluded that it is only due to the rash and negligence driving on the part of the driver of the bus, and hence the Tribunal directed the owner of the said bus/4th respondent herein and the Insurance company/appellant herein being insurer of the said vehicle to pay the compensation jointly and severally. The tribunal has awarded compensation for a sum of Rs.11,05,800/- against the claim of Rs.12,00,000/- under various heads as follows;

Heads	Compensation awarded by the Tribunal
Compensation for loss of dependency	Rs. 8,16,000/-
Future Prospects 30%	Rs. 2,44,800/-
Funeral Expenses	Rs. 5,000/-
Loss of Consortium	Rs. 20,000/-
Loss of Love and Affection (2x10000)	Rs. 20,000/-
Total	Rs. 11,05,800/-

Aggrieved against the said compensation and liability, the Insurance Company has preferred this appeal.

5. In the ground of appeal the learned counsel for the appellant contended that the Tribunal has committed an error by relying upon Ex.P.1, FIR without examining the author of the document. The award determined by the Tribunal for loss of dependency under various heads is highly excessive, without any basis and material evidence on record. To prove the fact of negligence on the part of the driver of the bus, no exhibit was examined before the Tribunal, hence the observation made by the Tribunal is contrary to the evidence on record and it is not sustainable in law. As per the RC and permit issued by the Regional Transport Authority, the bus is permitted to transport only 55 students to the college and the policy also covers 55 persons whereas, the statement in the FIR and other witnesses state that there were more than 55 persons travelled in the bus

and the deceased is one among the three persons who were standing in the foot board of the bus and they were not bothered about their safety while traveling in the said bus by traveling in the foot board and the accident has also occurred when the bus crosses the EB post. So, it is fairly on the part of the deceased and the injured persons' negligence, the accident occurred hence, there is violation of permit and also the condition, since at the time of accident, there were 75 persons travelled, more than the capacity and the permit, hence, the Tribunal ought to have fixed 55% contribution negligence on the part of the deceased.

6. Further argued that the award made by the Tribunal under various heads is also highly excessive and the monthly income of the deceased considered by the Tribunal is also without any basis, because Ex.P.3 is only an appointment order and hence, the liability as well as the award made by the Tribunal are not proper and that has to be set aside.

7. On the other hand the learned counsel for the claimants/respondents 1 to 3 herein argued that the Tribunal upon elaborate discussion on the aspect of negligence by verifying the evidence of P.W.1, one Thangavel and also Ex.P.1, FIR, especially the evidence of eyewitness namely, Vinayagam, who on the date of accident, i.e., on 31.03.2011, was sitting in the left corner of the last seat of the bus, has observed the negligence driving on the part of the driver of the bus, who had driven the bus in an uncontrolled manner and on seeing the lorry which came on the opposite side, he suddenly turned the vehicle to the extreme left side and thereby, the deceased and other two persons got themselves dashed against the EB post and sustained injuries. Hence, the Tribunal based on the evidence and the documents has given a finding that it is the driver of the 4th respondent, who is responsible for his rash and negligent driving, resulted in accident.

8. On hearing the learned counsel on both sides and perusing the materials placed on record, it is observed that the Tribunal after analyzing the documents and evidence placed by both sides, has observed that the accident has occurred on 31.03.2011 at about 8.45 hours, when the deceased was traveling in the 4th respondent's bus bearing Regn. No. TN 25-T-3786 from Kancheepuram to the college along with the other staffs and students. The driver of the said bus has driven the same in a negligent and an uncontrolled manner. On seeing the lorry, which came in the opposite side, the driver of the bus turned the vehicle to the extreme left side and hit on the EB post and thereby, caused the accident and the deceased sustained grievous injury and died on the spot. A criminal case was also registered and that was also observed by the Tribunal.

9. The appellant very much disown the liability by stating that the capacity of the bus was only 55 persons and there was more than 75 persons travelled in the said bus at that time of accident and the deceased is one among the injured persons, who were standing in the rear foot board of the bus and their bodies protruded outside the bus and when the bus came very close to the EB post on the left side, their bodies dashed against the post and thereby, caused the accident and there is no negligence on the part of the driver.

10. It is seen from the award that the Insurance Company/appellant herein has relied upon the judgment in 2013 (1) TNMAC (Kar); 2001-2-LW-69; and TNMAC 2013 I S.C, 481 to substantiate his arguments, but the tribunal has not considered the said judgment, same as it is not relevant to the facts and circumstances of this present case on hand.

11. It is the contention of the appellant that the tribunal without considering the M.V. report and Ex.R.5, charge sheet and in the absence of any investigation report, has fastened the liability on the Insurance Company. Further contended that based on Ex.P.3, which is only an appointment order, the Tribunal has taken the monthly income of the deceased as Rs.6,000/- which is highly excessive and without any relevant evidence, when his appointment as well as his job is a not a permanent and secured one. Hence, the determination of the Tribunal by taking his income and further awarding of future prospects are all without any evidence and documents.

12. On the other hand, respondents 1 to 3/claimants contended that the deceased was only 27 years at the time of death and his appointment order proves the fact that he has very bright prospects and he is also the breadwinner of the family consisting of the claimants, viz., the first claimant, his wife and the 2nd and 3rd claimants, the parents of the deceased.

13. On a perusal of the award, it is seen that the persons who are claiming compensation are the wife and parents of the deceased and also proves the fact that he is the man who with his job was not only providing financial support to the family, but also love and affection and the parents have lost the support of their son. The first claimant is the wife, who has lost the support of her life partner for her entire life and the Tribunal by considering all these aspects, has awarded the compensation under various heads.

14. It is vehemently contended by the appellant that when the seating capacity is only 55 persons, it is for the deceased who

has to be very careful while traveling in the foot board of the bus and he has to contribute to the accident and he is not entitled for the huge amount as determined by the Tribunal by fixing the entire liability on the driver of the bus.

15. On the other hand, respondents 1 to 3/claimants contended that the deceased is none other than the staff of the said 4th respondent Institution and he has every right to travel in the said bus, being a staff, it is for him to travel in the bus to reach the college and hence, there cannot be any negligence imposed on the deceased. It is the driver whose negligence of taking the bus on the left side on seeing the lorry caused the accident and hence, neither the capacity of the bus, nor the negligence on the part of the deceased resulted in the accident.

16. On a perusal of records the M.V. report which is attached with Ex.R.5 Charge Sheet and also the Insurance Policy Ex.P8, the vehicle involved in the accident, the 4th respondent's bus bearing Ref.No. TN 25-T-3786 was insured with the appellant herein having validity period till 26.11.2011 covering the date of accident on 31.03.2011. The appellant herein has not filed any investigation report before the tribunal and there is no contra evidence on the side of the appellant herein regarding the policy. Further, there is no positive evidence to show that due to the negligence of the deceased the accident was happened on the part of the appellant herein. Hence the stand taken by the appellant herein is not supported with documentary evidence and the arguments advanced by the appellant herein is unsustainable. In view of the above discussions, it is clear that there cannot be any negligence on the part of the deceased and the finding of the Tribunal is proper. The compensation awarded by the Tribunal under various head and fixing liability on the owner of the vehicle/4th respondent herein and on the Insurance Company/appellant herein and directed them to pay the compensation jointly and severally is very much reasonable and proper and does not require any interference.

17. In the result, the Civil Miscellaneous Appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

18. The appellant and the 4th respondent are directed to deposit the award amount ordered by the tribunal jointly and severally along with interest and costs, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the

claimant/respondents 1 to 3 are permitted to withdraw their respective shares of the award amount along with proportionate interest and costs as per the apportionment ordered by the tribunal, the less the amount if any, already withdrawn.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

abr

To

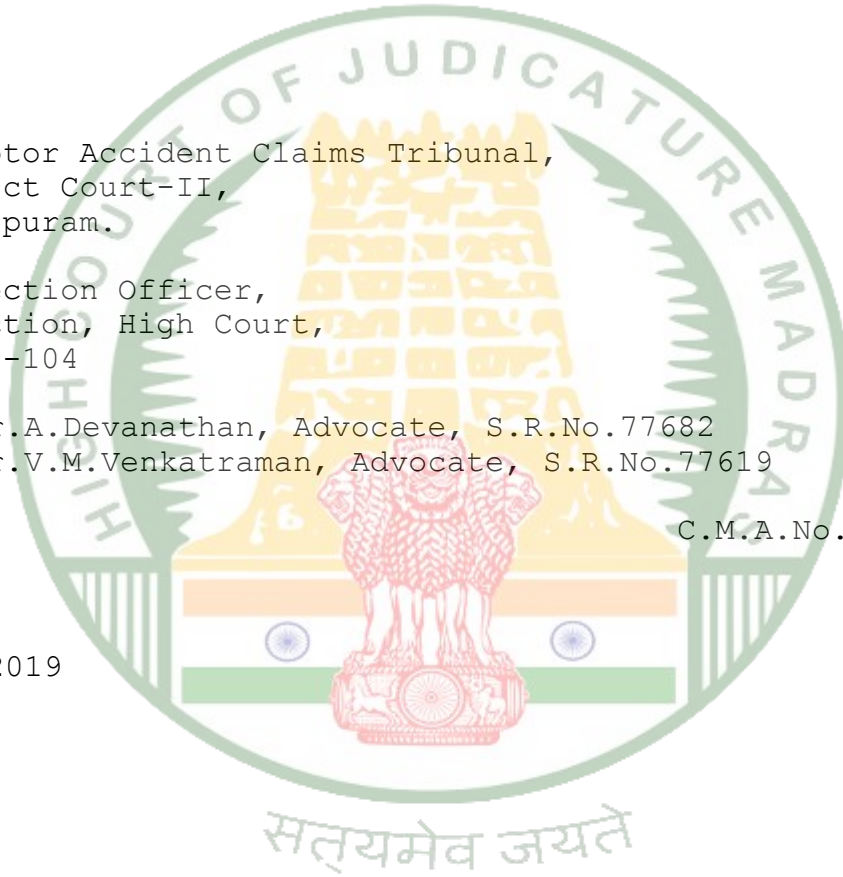
1. The Motor Accident Claims Tribunal,
District Court-II,
Kanchipuram.
2. The Section Officer,
VR Section, High Court,
Madras-104

+1cc to Mr.A.Devanathan, Advocate, S.R.No.77682

+1cc to Mr.V.M.Venkatraman, Advocate, S.R.No.77619

C.M.A.No.360 of 2015

VBA (CO)
CS/04/12/2019



WEB COPY