

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.08.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.No.3130 of 2019

and

C.M.P.No.17638 of 2019

The Managing Director

Tamil Nadu State Transport Corporation,
Kundandhai,

Thanjavur District - 612 001.

... Appellant/Respondent

Vs.

1.Thangam

2.Meganathan

3.Hemalatha

... Respondents/Petitioner

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 10.01.2019, made in M.C.O.P.No.501 of 2016, on the file of the Motor Accident Claims Tribunal, Additional District Court III, Cuddalore.

For Appellant : Mr.D.Venkatachalam

J U D G M E N T

The Civil Miscellaneous Appeal has been filed by the appellant-Transport Corporation, challenging the award dated 10.01.2019, made in M.C.O.P.No.501 of 2016, on the file of the Motor Accident Claims Tribunal, Additional District Court III, Cuddalore.

2.The appellant/Transport Corporation is respondent in M.C.O.P.No.501 of 2016, on the file of the Motor Accident Claims Tribunal, Additional District Court III, Cuddalore. The respondents filed the said claim petition, claiming a sum of Rs.15,00,000/- as compensation for the death of one Vaithiyanathan, who died in the accident that took place on 11.08.2016. The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred due to rash

and negligent driving by both the deceased as well as the driver of the bus belonging to the appellant/Transport Corporation and fixed 20% contributory negligence on the part of the deceased and 80% contributory negligence on the part of the driver of the bus belonging to the appellant/Transport Corporation and awarded a sum of Rs.5,40,000/- as compensation to the respondents and directed the appellant/Transport Corporation to pay 80% of the award amount i.e., Rs.4,32,000/- as compensation to the respondents. Against the said award dated 10.01.2019, made in M.C.O.P.No.501 of 2016, the appellant/Transport Corporation has come out with the present appeal challenging the liability fastened on them as well as the quantum of compensation awarded by the Tribunal.

3.The learned counsel appearing for the appellant contended that the Tribunal ought to have held that mere registering FIR against the driver of the appellant/Transport Corporation is more enough for holding negligence on him. The Tribunal erred in considering the evidence of PW1 who is wife of the deceased and interested witness. The accident occurred only due to negligence on the part of the deceased, who had ride the motorcycle on the left side of the road, in front of the bus, suddenly turned towards right side of the road without giving any signal and without seeing the oncoming vehicle and invited the accident. The Motor Vehicle Inspectors Report reveals that the bus had not dashed behind the motorcycle. The Tribunal has fixed only 20% contributory negligence on the deceased which is meagre. Further, the respondents 2 & 3 are married son and daughter of the deceased. They cannot be considered as the dependents of the deceased as they are living separately. The Tribunal ought to have deducted 50% of the income of the deceased towards personal expenses and the monthly income of the deceased fixed by the Tribunal is on the higher side. The total amount granted by the Tribunal is excessive and prayed for setting aside the award of the Tribunal.

4.Heard Mr.D.Venkatachalam, learned counsel appearing for the appellant/Transport Corporation and perused the materials available on record.

5.According to the appellant/Transport Corporation, while the deceased was riding the motorcycle on the left side of the road, in front of the bus suddenly turned towards right side of the road without giving any signal and without seeing the coming vehicle and invited the accident. The respondents/claimants have examined PW2 eyewitness to prove that the accident was occurred only due to rash and negligent driving by the driver of the bus belonging to the appellant/Transport Corporation. RW1/driver of the bus was examined to prove that the deceased was only responsible for the accident.

6. Though the appellant has contended that the accident had occurred due to the negligence on the part of the deceased, this Court is of the opinion that if, RW1 being a driver of the Transport Corporation was careful while driving the bus he could have been avoided the accident. The Tribunal considering the evidence of PW2, RW1 and Ex.P1/FIR held that the accident occurred only due to rash and negligent driving by the driver of the bus belonging to the appellant/Transport Corporation. However, the deceased who was riding the motorcycle on the left side of the road suddenly turned towards right side of the road without giving any signal also contributed for the accident. Therefore, the contributory negligence fixed on the part of the deceased at 20% is proper and the same does not warrant interference by this Court.

7. As far as quantum of compensation is concerned, the Tribunal fixed a sum of Rs.9,000/- as monthly income of the deceased and awarded a sum of Rs.3,60,000/- towards pecuniary loss. Since the accident is of the year 2016, the Tribunal by considering the age, avocation has fixed monthly income and awarded compensation under different heads which are not excessive and need not require any modification.

8. In the result, the Civil Miscellaneous Appeal is dismissed. The compensation and the contributory negligence fixed at 20% on the claimants and 80% on the Transport Corporation is confirmed. No costs. Consequently, connected Miscellaneous Petition is closed.

9. The appellant/Transport Corporation is directed to deposit 80% of the award amount i.e. Rs.4,32,000/- 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 to the credit of M.C.O.P.No.501 of 2016. On such deposit, the respondents are permitted to withdraw the respective share of the award amount, on the basis of apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn, by filing necessary applications before the Tribunal.

s/d-
Assistant Registrar

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Sub-Assistant Registrar

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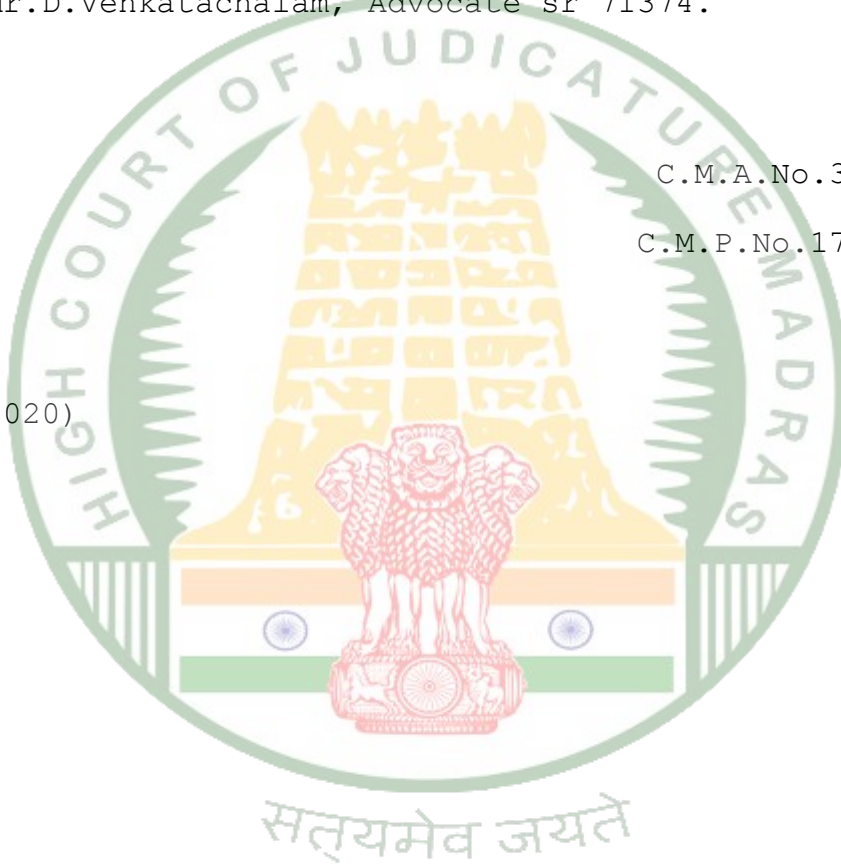
1.The III Additional District Judge,
Motor Accident Claims Tribunal,
Cuddalore.

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

+1 CC to Mr.D.Venkatachalam, Advocate sr 71374.

C.M.A.No.3130 of 2019
and
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LN(CO)
SP(05/06/2020)



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