



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.02.2019

CORAM

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A (MD) No.312 of 2018

and

C.M.P. (MD) No.4224 of 2018

The General Manager,
M/s.Tamil Nadu State Express Transport Corporation Ltd.,
Pallavan House,
Annasalai,
Chennai.

: Appellant/1st Respondent

Vs.

1. Usha

2. Minor Geevika

[Minor 2nd respondent is rep. by her
mother, natural guardian & next friend,
1st respondent]

: Respondents 1 & 2/Petitioners

3. P.Sundaram

4. The Branch Manager

M/s.United India Insurance Corporation Ltd.,
No.2, Bhuvaneswari Complex,
Dr.Sankaran Road, Namakkal District.

5. Chellaperumal

6. Natcharammal

: Respondents 3 to 6/Respondents 2 to 5

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to allow this appeal, set aside the award and decree made in M.C.O.P.No.90 of 2015, dated 28.11.2016 on the file of the Motor Accidents Claims Tribunal/Principal District Court, Tiruchirappalli.

For Appellant	: Mr.P.Prabhakaran
For R1 & R2	: Mr.C.Deepak
For R3	: No Appearance
For R4	: Mr.A.Shajahan
For R5 & R6	: No appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred against the judgment and the award passed in M.C.O.P.No.90 of 2015, dated 28.11.2016 on the file of the Motor Accident Claims Tribunal / Principal District Court, Thiruchirappalli.



2. Before the Tribunal, the appellant herein is the first respondent and the respondents 1 and 2 herein are the petitioners.

3. The brief facts of the case are as follows:

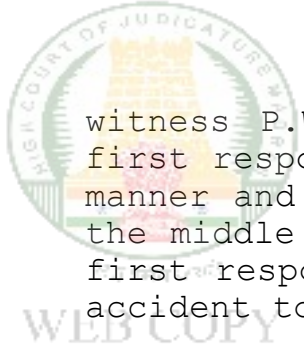
The claim application was filed by the claimants for the death of Balaji, who was working as a conductor. On 22.04.2013, while the driver of the appellant/first respondent was riding his bus near Parikkal Anjaneyar Temple Junction Road at about 04.30 hours on 23.04.2013, the second respondent vehicle lorry with overloaded steel rods, was proceeding in front of the first respondent vehicle SETC bus driven by its driver, in a rash and negligent manner and at hectic speed and suddenly applied the brake without giving any alert sound or without giving any indicator signal. Hence, the driver of the first respondent vehicle lost his control and dashed behind the second respondent vehicle. Due to sudden impact, the deceased Balaji who was sitting in the front side conductor sheet, was thrown away from the bus and sustained multiple injuries all over the body including head. Immediately, he was taken to the Government Villupuram Medical College Hospital, Villupuram. As a result, the said Balaji died on the spot. Hence, the legal heirs of the deceased filed a petition before the Tribunal claiming a sum of Rs.60,00,000/- as compensation.

4.The appellant herein in the counter statement has contended that when the bus bearing Reg.No.TN 01 N 5443 driven by its driver from Chennai to Trichy, near Parikkal anganeyar Temple junction road, the second respondent lorry with over loaded steel rods proceeded in front of the first respondent vehicle in a rash and negligent manner without adhering any traffic rules and abruptly stopped in the middle of the road, without giving any signal for the reason best known to the driver of the second respondent. The driver of the first respondent vehicle reduced speed and applied brake. In spite of the steps taken by the driver of the bus, the said bus dashed against the second respondent lorry. Due to the impact, the deceased sustained injury and died on the spot.

5.In the grounds of appeal, the appellant claimed that the driver of the lorry abruptly stopped the vehicle in the middle of the road without giving any signal. The driver of the bus applied sudden brake only. In spite of the steps taken by the driver of the first respondent, the said bus dashed against the second respondent lorry. Hence, the deceased sustained injuries and died on the spot.

6.Before the Tribunal, on the side of the petitioners, P.W.1 to P.W.3 were examined and Ex.P1 to Ex.P9 were marked. On the side of the respondents, R.W.1 and R.W.2 were examined and Exs.R1 to R3 were marked. On the side of the witness, Ex.X1 and Ex.X2 were marked.

7.The driver of the first respondent vehicle who was examined as R.W.1, deposed before the Tribunal that due to negligent on the part of the lorry driver, the accident was happened. But the eye



witness P.W.2 has deposed in his evidence that the driver of the first respondent vehicle had driven his bus in a rash and negligent manner and the driver of the second respondent stopped the lorry in the middle of the road without giving any signal, due to which, the first respondent bus dashed against the lorry and accordingly, the accident took place.

8. Recording the said fact, the Tribunal has given a finding that the first respondent contention is not sustainable because, the accident occurred only due to the rash and negligence on the part of the first respondent vehicle driver.

9. The Tribunal after analyzing the evidence placed before him, has given a finding that the first respondent is liable to pay the compensation to the petitioners and respondents 4 and 5 and awarded compensation of Rs. **31,66,256/-** along with interest 7.5% p.a. from the date of petition till the date of deposit of compensation amount. Aggrieved against the said liability of the award, the appellant who is the Transport Corporation preferred this appeal.

10. Even in the claim petition, the petitioners contended that at about 04.30 hours, the second respondent vehicle lorry bearing Registration No. TN 40 A 6700 which was proceeding in a rash and negligent manner at a hectic speed in front of the first respondent vehicle and suddenly applied brake without giving any alert sound and without giving any indicator signal. So, the first respondent vehicle driver lost his control and dashed against the second respondent vehicle lorry. He further contended that the driver of the lorry who suddenly stopped the lorry in the middle of the road without any signal or any alert sound, due to which, the first respondent bus dashed against the lorry and the accident took place.

11. Heard the learned counsel on either side.

12. It is argued by the learned counsel for the appellant / 1st respondent that in the claim petition, it has been averred that there is also a clear negligence on the part of the driver of the second respondent lorry. Hence, the entire liability cannot be fixed on the appellant / transport corporation.

13. A perusal of the evidence and also the averments made in the petition would show that the driver of the lorry was not examined before the tribunal whereas, the driver of the first respondent was examined. The evidence of P.W.1 and P.W.2 has also confirmed that the second respondent lorry suddenly stopped in the middle of the road and the driver of the first respondent bus applied brake and the accident took place.

14. Hence, in view of the fact, which is stated in the claim petition as well as the evidence given by P.W.1 and P.W.2, it is observed that the lorry driver stopped the vehicle in the middle of the road. Hence, there is negligence on the part of the driver of



the first respondent bus in applying sudden brake and there is some contributory negligence on the part of the driver of the lorry, who is responsible for the accident. Hence, the liability on the driver of the lorry is fixed at 25%. The liability on the driver of the first respondent bus has to be fixed at 75%.

WEB COPY

15.It is contended on the side the respondents 1 and 2 / claimants that since the first claimant is a young widow and she has a minor child also, the award passed by the tribunal is very much reasonable and therefore, the quantum requires no interference.

16.On perusal of the sum determined by the tribunal, it is observed that the sums awarded under various heads by applying the proper multiplier, are very much reasonable, which requires no interference. Therefore, the quantum awarded by the Tribunal is confirmed. The interest awarded by the Tribunal is also confirmed.

17.It is represented by the appellant Transport Corporation that the appellant had already deposited a sum of Rs.20,02,973/-. The appellant / Transport Corporation is liable to pay only 75% of the award amount with accrued interest and costs. Since 50% of the award amount is deposited by the appellant Transport Corporation, the appellant Transport Corporation is directed to deposit the remaining 25% of the award amount and the balance amount of 25% with accrued interest and costs, has to be deposited by R4/United Insurance Company, who is the insurer of the third respondent / second respondent lorry.

18.In view of the aforesaid observations, this Civil Miscellaneous Appeal is partly allowed. The appellant Transport Corporation is directed to deposit the remaining 25% amount with accrued interest and costs and the fourth respondent / United India Insurance Company is directed to deposit 25% of the award amount with accrued interest and costs, within a period of six weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the first respondent / first claimant and the respondents 5 and 6 / respondents 4 and 5 are permitted to withdraw their respective shares with accrued interest and costs, as apportioned by the Tribunal, less the amount already withdrawn, by filing an application before the Tribunal. The share of the second respondent / minor claimant shall be deposited in anyone of the nationalized banks till she attains majority and the guardian of the minor claimant is permitted to withdraw the interest accrued from the said deposit, once in three months. Consequently, connected Miscellaneous Petition is closed.

sd/
Assistant Registrar(CS-III)

/True Copy/

<https://hcservices.ecourts.gov.in/hcservices/>

Sub Assistant Registrar



To

The Motor Accidents Claims Tribunal/
Principal District Court,
Tiruchirappalli.

WEB COPY

Copy to

The Record Keeper,
Vernacular Section, (2 COPIES)
Madurai Bench of Madras High Court,
Madurai.

+1 CC to MR.P.PRABHAKARAN, Advocate (SR-48237[F] dated 19/02/2019)
+1 CC to MR.C.DEEPAK, Advocate (SR-48666[F] dated 21/02/2019)
+1 CC to MR.K.P.NARAYANA KUMAR, Advocate (SR-48846[F] dated
21/02/2019)

C.M.A(MD)No.312 of 2018

and

C.M.P. (MD)No.4224 of 2018

19.02.2019

RMI

_MK (04.06.2019) 5P 7C