

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.02.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.2254 of 2013

And

M.P.No.1 of 2013

The Managing Director,
Tamil Nadu State Transport Corporation,
Coimbatore Division,
Mettupalayam Road, Coimbatore District.

... Appellant /2nd Respondent

Vs.

1. Yusuf.

2. Minor Riyas

3. Minor Ripash

4.Minor Risona ... Respondents 1 to 4/Petitioners
(Respondents 2 to 4 are represented by their
Father Next Friend 1st Respondent)

5.Paneerselvam ...4th Respondent/ 1st Respondent

Prayer: This petition is filed Under Section 173 of Motor Vehicles Act 1988 against the Judgment and decree passed by the Motor Accidents claim Tribunal, Subordinate Judge, Pollachi made in MCOP.No. 301 of 2008 dated 04.09.2012.

For Appellant :Mr.S.Sundaravadanam

For Respondent 1 to 4 :Mr.L.Mouli

R65

: Given up

JUDGMENT

The appellant/Transport Corporation has filed this appeal challenging the award passed by the Motor Accidents claim

Tribunal, Sub ordinate Judge, Pollachi made in MCOP.No. 301 of 2008 dated 04.09.2012.

2. The necessary relevant facts are stated hereunder to find out whether the appellant is entitled for relief as prayed in this appeal.

The first respondent was proceeding in a two wheeler and his wife Joharara (deceased) was proceeding as a pillion rider at that time a lorry bearing Registration No.TN-38-N-0539 came in the opposite direction and dashed against the two wheeler. As a result of which the deceased fell down and the bus ran over her head and she was succumbed at the spot itself. Therefore, the legal heirs filed a claim petition before the Tribunal seeking compensation for the death of Joharra(deceased). The Tribunal after analyzing the available materials awarded Rs.6,92,000/- at 7.5% p.a from the date of petition till the date of deposit.

3. Aggrieved over the said finding of the Tribunal, the appellant/Transport Corporation has come forward with the present appeal.

4. Before the Tribunal on the side of the appellant 2 witness was examined as P.W.1 and P.W.2 and documents Ex.P.1 to Ex.P.7 were adduced. On the side of the respondents one witness was examined as R.W.1 and documents Ex.R.1 to R6 were adduced. On the basis of evidence available on record, the Tribunal concluded that the negligence was on the part of the rider of the two wheeler and awarded a sum of Rs.90,000/- as compensation to the claimant.

5. The learned counsel for the appellant/Transport Corporation contended that the liability fasted against them is improper as the negligence exists on the part of the two wheeler who proceeded in the two wheeler with two pillion riders. He would further contend that the

liability fastened against them is improper and prays to allow this appeal.

6. Per Contra the learned counsel for the claimants/respondents 1 - 4 submitted that the driver of the bus stopped the vehicle without following any precautionary measures. Hence, the accident took place. He would further contend that the Tribunal has analysed each and every aspect and fixed the negligence on the part of the driver of the bus. In any event the compensation awarded by the Tribunal is very low for a death of the person.

7. On a perusal of the award of the Tribunal with regard to negligence aspect it is seen that P.W.1 in his evidence has categorically stated that accident took place due to the

negligence of the driver of the bus. In the instance case, the question of fact that when three persons are travelling in a motor cycle, two as pillion riders, any usual movement of the pillion riders would make the rider of the motor cycle to lost his control over the vehicle. But, mere triple riding on a motorcycle cannot be a ground to infer that the accident occurred due to negligence of the rider of the motor cyclist. There is no evidence to show that the accident occurred because of travelling of three persons on the motor cycle. It cannot be assumed that the accident resulted because of the triple riding of the motor cycle. Ex.P.4/Motor Vehicle Inspector's report reveals the act of the driver of the bus in stopping the vehicle without adopting proper precaution measures is also covered within the wider meaning of rash and negligent driving of the vehicle. Ex.P.1/copy of the F.I.R also supports the case of the claimant rather than the appellant. Hence, the Tribunal concluded that the driver of the bus is the cause for the accident. Therefore, it is made clear that there is no error or infirmity in the award passed by the Tribunal with regard to negligence aspect and the same is confirmed as such.

8. With regard to quantum, the Tribunal considering the avocation of the deceased fixed Rs.4,500/- as her monthly income and taking note of her age deducted $1/3^{\text{rd}}$ (Rs.3,000/-) towards his personal expenses and applied the correct multiplier '17' and arrived Rs.36,000/- (Rs.3,000 x 12) as annual income and quantified Rs.6,12,000/- (Rs.36,000 x 17)

towards loss of pecuniary benefit. As the first respondent lost his companion in the young age Rs.25,000/- was awarded towards loss of consortium. The Respondents 1 to 4 who are the family members of the deceased are put to mental agony due to the sudden demise of the sole bread winner of the family, hence Rs.40,000/- (Rs.10,000/- each) was awarded towards the head loss of love and affection. Apart from this Rs.10,000/- and Rs.5,000/- was awarded towards the head funeral expenses and Transportation respectively. Thus, awarded Rs.6,92,000/- as total compensation. This Court is of the view that the finding rendered by the Tribunal is persuasive and cannot be brushed aside easily and the same is confirmed as such.

9. In the result this appeal is dismissed and the appellant/Transport Corporation is directed to deposit the award passed by the Tribunal with 7.5% p.a from the date of petition till the date of realization, less the amount already deposited if any, within a period of 8 weeks from the date of receipt of a copy of this Judgment. After making such deposit the claimant/first respondent is permitted to withdraw the amount, by making proper application before the Tribunal. The amount apportioned

to the minor respondents 2 to 4 shall be deposited in any one of the nationalised bank till they attain majority. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

smn

To

1.The Motor Accident Claims Tribunal,
Sub ordinate Judge, Pollachi .

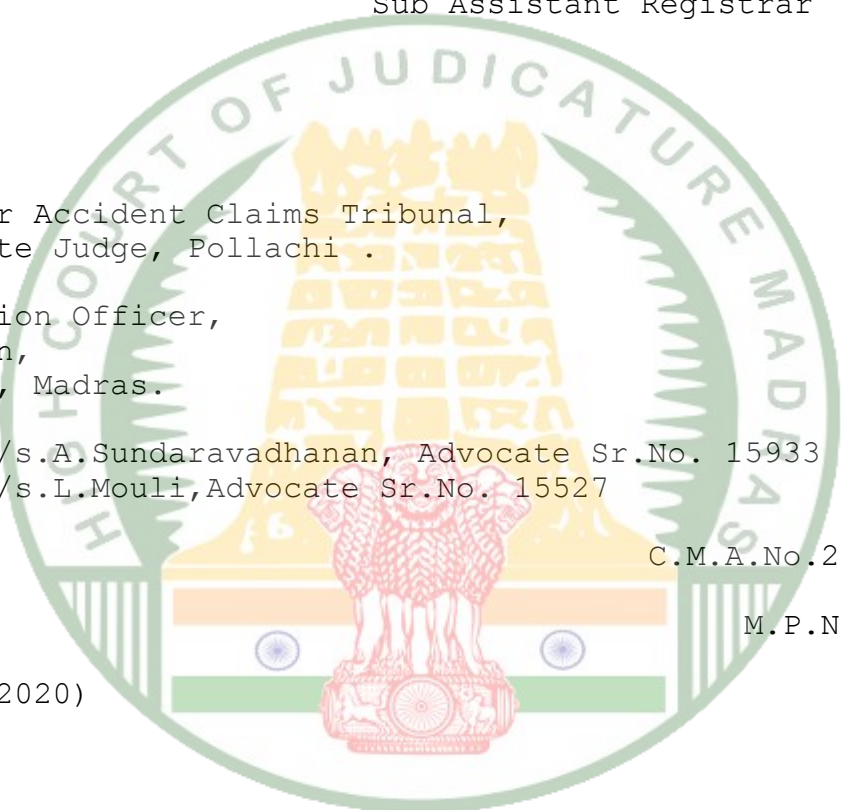
2.The Section Officer,
V.R Section,
High Court, Madras.

+1 cc to M/s.A.Sundaravadhanan, Advocate Sr.No. 15933

+1 cc to M/s.L.Mouli, Advocate Sr.No. 15527

C.M.A.No.2254 of 2013
and
M.P.No.1 of 2013

NRL (CO)
RMP (19/12/2020)

The seal of the High Court of Madras is a circular emblem. It features a central golden temple gopuram (tower) with a red lion standing in front of it. The lion is facing forward and has a red circular stamp on its back. The gopuram is set against a background of a green and white striped field. The words "HIGH COURT OF JUDICATURE MADRAS" are written in a green arc around the top of the seal. At the bottom, the Sanskrit motto "सत्यमेव जयते" (Satyameva Jayate) is written in Devanagari script.

WEB COPY