

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.08.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.2649 of 2013

(Through Video Conferencing)

Athiappan (Died)

1. Meyyappan

2. Parvathy

3. Vijayalakshmi

4. Parameswaran

All are residing at

Velliyankadu,

Thanneerpandhalpalayam,

Kumarmangalam Post,

Tiruchengode Taluk,

Namakkal District.

... Appellants/Petitioners

Vs.

Tamil Nadu State Transport Corporation Ltd.,

Represented by its Managing Director,

Having office at

Ramakrishna Road,

Salem - 636 007.

... Respondent/Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the dismissal of the claim petition by the fair and decreetal order dated 13.07.2012 made in M.C.O.P.No.2 of 2010, on the file of the Motor Accidents Claims Tribunal (Subordinate Judge's Court) at Tiruchengode.

For Appellants : Mr.T.L.Thirumalaisamy

For Respondent : Mr.Thangam
for Mr.D.Raghu

JUDGMENT

With consent of both the learned counsel for the appellants and the respondent, this Civil Miscellaneous Appeal is taken up for hearing and the final disposal.

2. This Civil Miscellaneous Appeal has been filed by the appellants/claimants against the impugned fair and decreetal order dated 13.07.2012 passed by the Motor Accidents Claims Tribunal (Subordinate Judge's Court) at Tiruchengode in M.C.O.P.No.2 of 2010.

3. The claim petition was originally filed on 04.11.1992 by Athiappan and Meyyappan, the two sons of the deceased aged about 35 years and 33 years. The accident is said to have taken place on 08.10.1992 at about 05.30 p.m., at Rasipuram Main Road near Mandagapalayam, when the deceased Kalianna Gounder while riding a TVS-50 Moped was knocked down by the bus belonging to the first respondent State Transport Corporation.

4. Though the claim petition was filed in the year 1992, it was transferred from the District Court, Salem to Sub Court, Sankagiri in the year 1993 and eventually transferred before the Chief Judicial Magistrate Court, Namakkal District. Before the claims Tribunal, the appellants/claimants originally claimed a sum of Rs.1,00,000/-.

5. Before the claims Tribunal, the respondent filed Counter denying the liability though they admitted the accident. The Tribunal vide impugned fair and decreetal order has rejected the claim petition holding that the vehicle of the first respondent was not driven in a rash and negligent manner though the claimants had produced Ex.P1 (First Information Report) and Ex.P2 (Charge Sheet) which indicates otherwise to the effect that the driver of the bus had driven it in a rash and negligent manner. The onus has been put on the appellants and therefore, the compensation has been denied for being failed to produce rough sketch, observation mahazar, the Motor Vehicle Inspector's Report and the Judgment of the Judicial Magistrate Court in respect of criminal case registered against the driver of the bus.

6. The impugned Judgment further states that the appellants have not produced any document to show whether the deceased Kalianna Gounder had a valid driving license to drive the TVS-50 Moped at the time of the accident.

7. While dismissing the claim petition, the claims Tribunal observed as follows:-

"Therefore registration of the criminal case against the driver of the bus and filing a charge sheet is not at all a reliable evidence to prove the rash and negligent act of the driver of the bus. The petitioners have not even produced the judgement copy of the criminal case. Under these circumstances merely on the basis of the FIR and Chargesheet, it cannot be said that only due to the rash and negligent act of the driver of the bus the accident occurred."

8. I have considered the arguments advanced on behalf of the appellants and the respondent State Transport Corporation.

9. This is a strange case where the Tribunal has rejected the claim petition by making skewed observation as extracted above. It was for the respondent State Transport Corporation to prove that there was no negligence on the part of the driver. They have merely stopped by stating that the driver of the respondent State Transport Corporation was not negligent. They ought to have been aware of the subsequent proceedings which would have culminated in the conviction or acquittal of the driver.

10. In this case, both the appellants the respondent have not discharged the burden of proof. Though the appellants also have not produced documents and have not given correct calculation for compensation, the fact that there was accident and FIR and Charge Sheet were filed indicates that the claimants have made out a case for getting compensation. The deceased was aged about 56 years. According to the respondent State Transport Corporation, the deceased was aged about 70 years. There is no proof to substantiate the same.

11. However, considering the manner in which the proceedings have been conducted, to do justice and to award a just compensation, the compensation under Section 163(A) of the Motor Vehicles Act, 1988 is awarded. The age of the deceased is taken as 56 years considering the age of the said Athiappan (died) and appellants as 35, 33, 39, 25, 22 respectively at the time of the accident. The income of the deceased is taken as Rs.2,000/- per month as the claimants have themselves taken it as Rs.2,100/- per month. Therefore, the compensation to be

awarded to the appellants in terms of Section 163(A) of the Motor Vehicles Act, 1988, is quantified as follows:-

Heads and Calculation	Amount of Compensation
Loss of Dependency:- Income - Rs.2,000/- p.m Annual Income (2000 x 12) : Rs.24,000/- Less: Personal Expenses (24000 x 1/3 rd) : Rs. 8,000/- Contribution to the family : Rs.16,000/- Multiplier - 8 (16,000 x 8) : Rs.1,28,000/-	
Funeral Expenses	Rs. 2,000/-
Loss of estate	Rs. 2,500/-
Total	Rs.1,32,500/-

12. Therefore, the respondent is directed to deposit the amount of compensation of Rs.1,32,500/- together with interest at 6% from the date of claim petition till the date of deposit, before the Tribunal, within a period of six weeks from the date of receipt of a copy of this Judgment.

13. It is noticed that the 1st appellant and Athiappan (1st claimant before the Tribunal) are the sons of the deceased. Since Athiappan died during the pendency of the claim petition before the Tribunal, legal heirs of the deceased Athiappan were impleaded in the claim petition. They are the 2nd to 4th respondents herein.

14. Therefore, on such deposit, the 1st respondent is permitted to withdraw the 50% of the compensation and the balance 50% of the compensation is permitted to be withdrawn together with interest thereon by the 2nd to 4th respondents

equally, by filing suitable applications before the Tribunal.

15. Accordingly, this Civil Miscellaneous Appeal stands partly allowed. No cost. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar

/true copy/
Sub Asst. Registrar

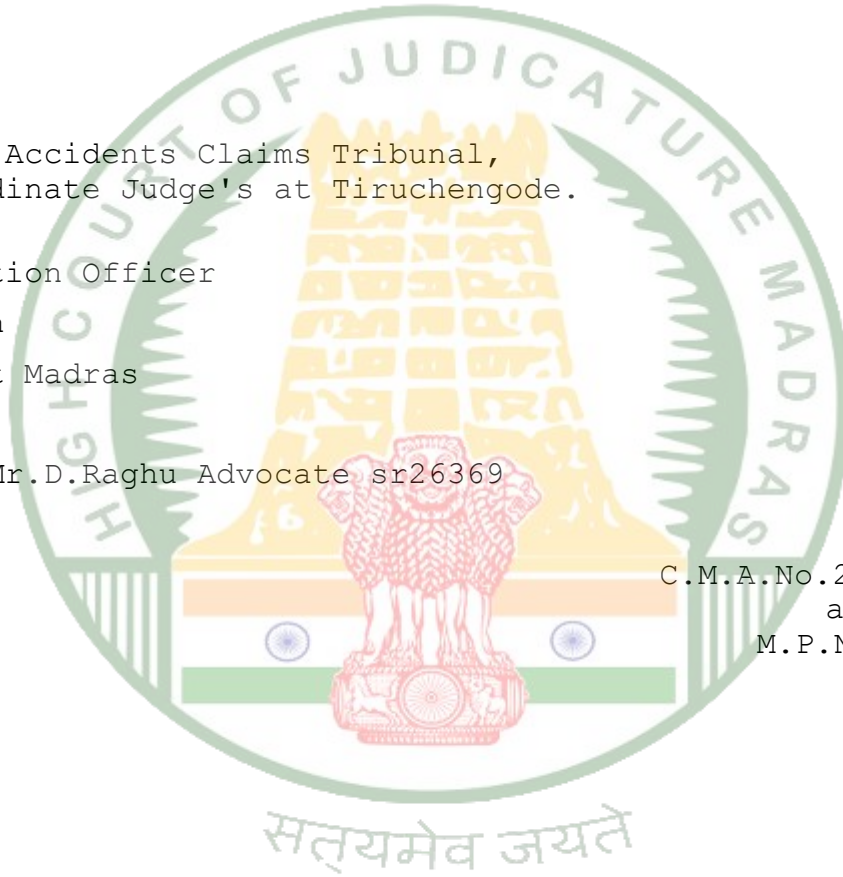
To:
The Motor Accidents Claims Tribunal,
The Subordinate Judge's at Tiruchengode.

2.The Section Officer
VR Section
High Court Madras

+1 cc to Mr.D.Raghu Advocate sr26369

C.M.A.No.2649 of 2013
and
M.P.No.1 of 2013

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