

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13-07-2020

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.M.A. No.2054 of 2018

And

C.M.P.No.16055 of 2018

The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Tiruvannamalai Division,
Tiruvannamalai. ... Appellant/4th Respondent

vs.

1.Alamelu
2.Manigandan
3.Minor Siva

4.Minor Lavanya
(R-3 and R-4 are minors represented
by their mother and natural guardian
R-1)

5.Sagunthala ... Respondents 1 to 5/ Claimants

6.Rani ... 6th respondent/ 1st respondent

7.Manager Royal Sundaram Alliance
Insurance Company Ltd.,
No.5, R.J.Plaza,
Katpadi Main Road,
Viruthampattu,
Vellore-632 006. .. 7th Respondent/2nd respondent

8.Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Division-2, Villupuram Ltd.,
Chennai-Bombay High Road,
Kanchipuram.
(Not necessary party) .. 8th Respondent/ 3rd respondent

The Civil Miscellaneous Appeal is preferred under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 20.04.2017 passed in M.C.O.P. No.80 of 2012 on the file of the learned Sub Judge, Sub Court-cum-Motor Accidents Claims Tribunal, Cheyyar.

For Appellant : Mr.K.J.Sivakumar

J U D G M E N T

The judgment and decree dated 20.04.2017 passed by the learned Sub Judge, Sub Court-cum-Motor Accidents Claims Tribunal, Cheyyar in M.C.O.P. No.80 of 2012 is under challenge in the present Civil Miscellaneous Appeal.

2. The learned counsel appearing on behalf of the appellant-Transport Corporation mainly raised the grounds by stating that the accident occurred due to rash and negligent act of the lorry driver. The lorry bearing Registration No.TN-25-AB-6224 which came in the opposite direction and dashed against the right side of the appellant-Transport Corporation bus. Thus the Trial Court failed to consider the FIR, Ex.P-1, which is registered against the driver of the lorry.

3. The claimants have not established the income of the deceased by filing necessary documents and therefore, the Award of the Tribunal is liable to be set aside.

4. The accident occurred on 17.03.2012 at about 8.00 P.M. from Sethupattu to Polur Road near Paccakudisai Village. Sethupattu Police Station registered a case in Crime No.419 of 2012 under Sections 279, 337 and 304-A IPC. The deceased sustained grievous injuries at the time of accident and subsequently, admitted in CMC Hospital at Vellore and died thereafter.

5. The Tribunal considered the issues with reference to the facts as well as the evidences produced by the respective parties. As far as the issues are concerned, the Tribunal arrived a conclusion that the accident occurred on account of the carelessness of both the drivers of the lorry and the Corporation bus. In other words, it is held that both the lorry driver and the bus driver are responsible for the accident and

accordingly, fixed the negligence of 70% on the lorry driver and 30% on the bus driver. A joint liability was fixed based on the evidences and the lorry driver has not established that he has not committed any act of negligence. The reasons stated by the Tribunal in its findings are convincing in view of the fact that in the absence of any clinching evidence, the lorry driver cannot be exonerated.

6. This apart, the FIR itself was filed against the lorry driver and not against the bus driver. Under these circumstances, the fixing of 70% negligence on the lorry driver is based on the weightage of evidence and there is no perversity.

7. On perusal of the entire findings of the Tribunal, this Court has no hesitation in arriving a conclusion that the Tribunal has rightly considered the issues with reference to the act of negligence.

8. As far as the quantum of compensation is concerned, the deceased was aged about 40 years at the time of accident and he was working as a Gas Welder and was having a Gas Welding Shop of his own. As per the claim petition, the monthly income of the deceased was stated as Rs.30,000/- and this apart, the first claimant is his wife and the three children out of which two are minors and the fifth claimant is the mother. Taking note of all these factors, the Tribunal has fixed the monthly salary of the deceased at Rs.9,000/- and accordingly, applied the multiplier. The deceased was running a Gas Welding Shop and therefore, the fixation of a sum of Rs.9,000/- as the monthly salary of the deceased at no circumstances can be construed as excessive. This apart, wife, three children and mother are the dependents and therefore, this Court is not inclined to interfere with the quantum of compensation awarded by the Tribunal. Accordingly, the judgment and decree dated 20.04.2017 passed by the learned Sub Judge, Sub Court-cum-Motor Accident Claims Tribunal, Cheyyar in MCOP No.80 of 2012 stands confirmed and consequently, the C.M.A.No.2054 of 2018 stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is also dismissed.

9. The appellant-Transport Corporation is directed to deposit the entire Award amount with accrued interest, if not already deposited, within a period of 12 weeks from the date of receipt of a copy of this judgment and on receipt of such deposit, the claimants are permitted to withdraw the award amount as per the apportionment granted by the Tribunal and by filing appropriate applications. The payments are to be made only through RTGS. If the minors have not attained the age of

majority, then their portion of the amount is to be deposited in any one of the Nationalised Bank till they attain majority under the Interest Bearing Deposit Scheme.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

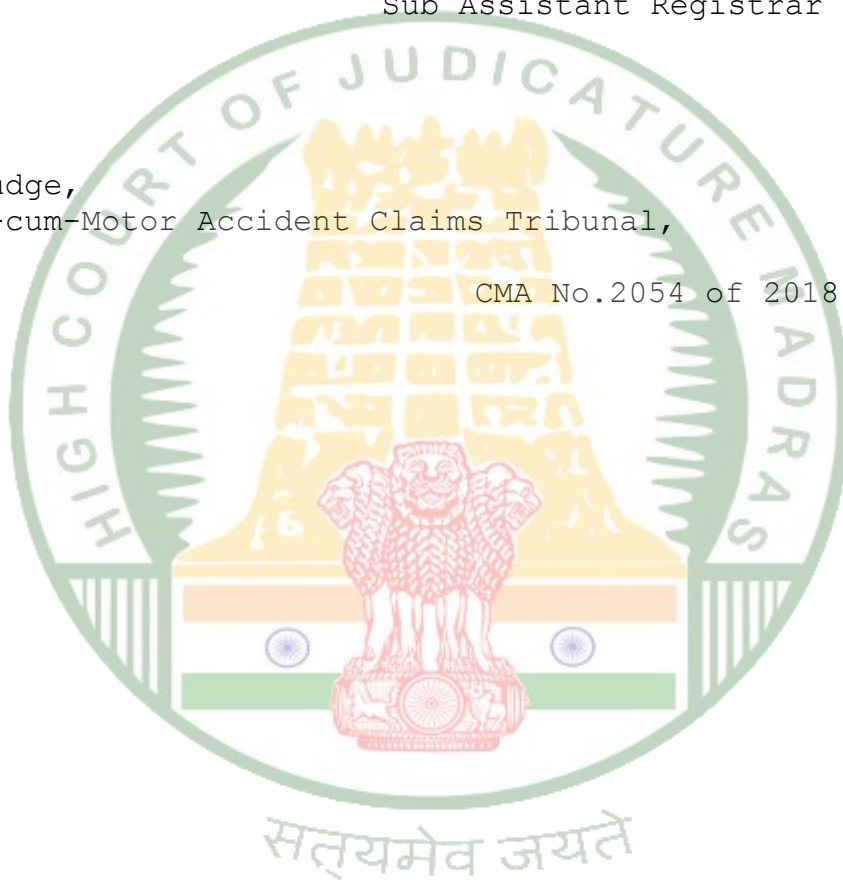
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To

The Sub Judge,
Sub Court-cum-Motor Accident Claims Tribunal,
Cheyyar.

CMA No.2054 of 2018

SSI (CO)
kk 7/1



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