

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No.2065 of 2018

and

C.M.P.No.16082 of 2018

The Managing Director,
Tamil Nadu State Transport Corporation
Limited,
Villupuram Division I, Tiruvannamalai,
Having their office at
New Bye Pass Road, Vengikkal,
Tiruvannamalai Taluk and District.

..Appellant/Respondent

Vs.

1.Kala
2.Minor Varshini
3.Minor VishnuPriya
Minors are represented by their mother/
next friend/guardian Tmt.Kala
All are residing at
No.6/7, North First Street,
Tiruvannamalai Town and District.

..Respondents/Petitioners

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, against the Judgment and Decree dated 30.08.2017 made in M.C.O.P.No.62 of 2016 on the file of the Motor Accident Claims Tribunal, The Special Sub Judge (MCOP), Tiruvannamalai.

For Appellant : Mr.K.J.Sivakumar

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J U D G M E N T

The Civil Miscellaneous Appeal is filed against the judgment and decree dated 30.08.2017 made in M.C.O.P.No.62 of 2016 on the file of the Motor Accident Claims Tribunal, The Special Sub Judge (MCOP), Tiruvannamalai.

2. The learned counsel appearing on behalf of the Tamil Nadu State Transport Corporation contended that the Trial Court has passed the Award based on the evidence of PW1, who is the wife of the deceased and she was not an eye witness. This apart, the FIR was marked as Ex.P1 has been registered against the deceased and therefore, the Trial Court has committed an error in granting compensation. RW1, who is the Driver of the Bus, had deposed that the accident occurred due to the carelessness on the part of the deceased and accordingly, the Tribunal ought not to have allowed the Claim Petition. There is no valid document produced to establish the age of the deceased. There is no evidence to prove the income of the deceased. Thus, the award is liable to be scrapped as the Tribunal has proceeded without any evidence for granting compensation.

3. The Claim Petition was filed under Section 166 of the Motor Vehicles Act, 1988 and the deceased Mr.Sudhakar was aged about 45 years at the time of accident and he was working as a Security at Chennai in a Private Company and was earning not less than a sum of Rs.15,000/- per Month. On 20.09.2012, at about 7.45 hours, the deceased was travelling as a passenger in the bus bearing Registration No.TN-25-N-0245 at Chennai to Tiruchirapalli Road near Vandalore Police Signal. The Driver of the Bus drove the Bus in a rash and negligent manner and applied the brakes suddenly and the deceased, who was standing inside the bus near front side entrance was thrown out from the Bus and fell down on the road. Accordingly, the deceased sustained fatal injuries and died on the spot.

4. The Otteri Police Station registered a case in Crime No.6111/12 Under Sections 279 and 304(A) IPC against the driver of Transport Corporation Bus. The first claimant is the wife of the deceased and the 2nd and 3rd claimants are the daughters of the deceased. The two daughters of the deceased suffered loss of income, love and affection and they became helpless. The Tribunal considered the issues with reference to the document as well as the evidence and arrived a conclusion that the deceased was standing near the front entrance of the Bus at the time of accident. Since the deceased also contributed to the negligence, the Tribunal fixed the contributory negligence of the deceased at 20%. The contributory negligence of 20% was fixed on account of the fact that the deceased was standing near the front entrance of the Bus at the time of accident and being a passenger, the deceased should have taken care, while travelling in a bus.

5. In view of the fact that he was not careful, while travelling in a bus and was standing near the entrance of the bus at the time of accident, the Tribunal has rightly fixed the contributory negligence of 20% on the side of the deceased, this Court do not find any error in respect of assessing the negligence by the Tribunal and therefore, the finding in this regard are in accordance with the established principles.

6. As far as the quantum of compensation is concerned, the Tribunal considered the fact that the deceased was aged about 45 years and wife and two daughters are the dependents and they became helpless. Though there is no income proof, it was established that the deceased was working as a Security in a Private company at the time of accident. Under those circumstances, the Tribunal has considered the deposition of the claimants PW1. The fact established was that the deceased was working as a Security in a Private company at Chennai. In the absence of any evidence to establish the salary, the Tribunal fixed the income of the deceased as Rs.6,500/- per month, which cannot be construed as excessive and therefore, this Court is of the considered opinion that the monthly salary of Rs.6,500/- fixed by the Tribunal is appropriate and there is no excessiveness.

7. In view of these facts, the quantum of compensation awarded by the Tribunal is just and appropriate and there is no acceptable ground for the purpose of interfering with the award passed by the Tribunal and accordingly, the judgment and decree passed by the Motor Accident Claims Tribunal in M.C.O.P.No.62 of 2016 stands confirmed. Consequently, C.M.A.No.2065 of 2018 is dismissed.

8. The appellant / Tamil Nadu State Transport Corporation is directed to deposit the entire award amount with accrued interest, within a period of twelve weeks from the date of receipt of a copy of this judgment, if not already deposited and on such deposit, the respondents/claimants are permitted to withdraw the entire award amount with accrued interest as per the apportionment granted by the Tribunal in its award by filing an appropriate application and the payments are to be made through RTGS.

9. If the Minors have not attained the age of majority, then their portion of the amount are to be deposited in any one of the Nationalized Bank till they attained the age of majority under the interest bearing deposit scheme.

10. No costs. Connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar

Kak

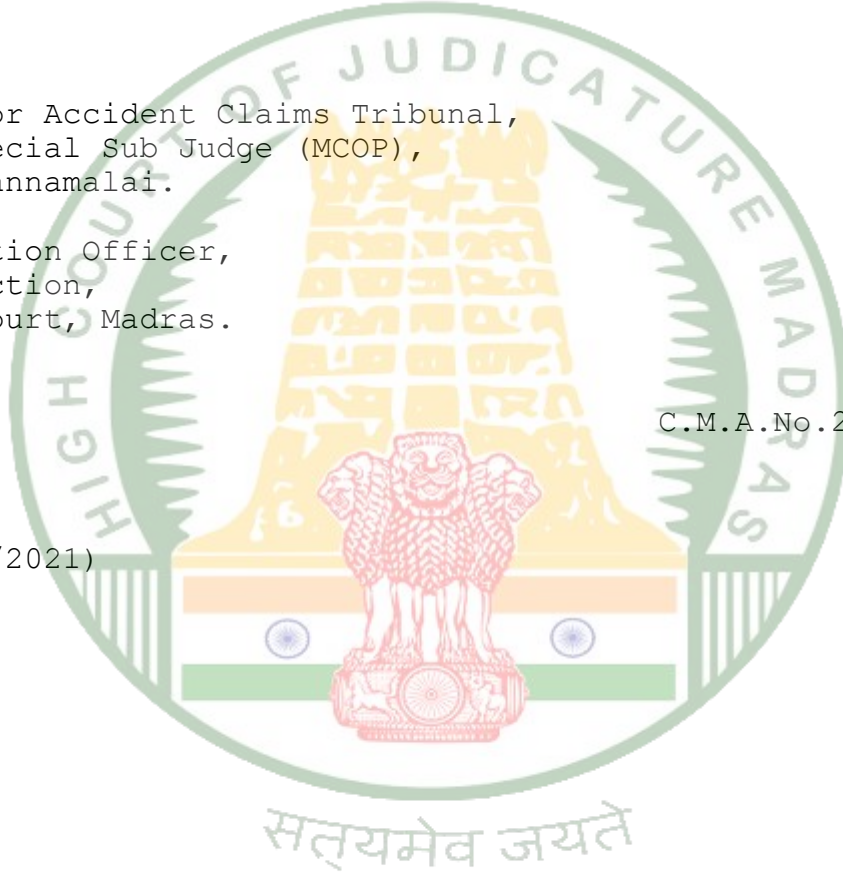
To

1.The Motor Accident Claims Tribunal,
The Special Sub Judge (MCOP),
Tiruvannamalai.

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

C.M.A.No.2065 of 2018

RR (CO)
GMY (09/04/2021)



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