

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 03.12.2020

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.728 of 2016

1.Smt.Padmini

2.Minor Lakshmanananth
(Rep. by next friend guardian Mother Padmini)

3.ChettiyammalAppellants

Vs

The Managing Director,
TNSTC,
Coimbatore.

...Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 31.01.2007 made in M.C.O.P.No.1376 of 2006 on the file of the Motor Accidents Claims Tribunal, I Additional District Judge, Salem.

For Appellant : Mr.K.Selvaraj
For Respondents : Mr.Arun
for Mr.A.Sundaravathanan

J U D G M E N T

(This case has been heard through Video Conferencing)

Heard the learned counsel for the appellant and the respondent.

2. This is a case of fatal accident, in which one Elango aged about 42 years working as Record Clerk in Indian Overseas Bank, Kattampatti Branch, Coimbatore, died, when the Corporation bus ran over his body while he tried to board the moving bus.

3. The accident occurred on 12.05.2006. The injured died the next day in the hospital on 13.05.2006. Post Mortem was conducted and visceral report awaited. The F.I.R. given by the wife of the deceased indicates that in a drunken state, the

deceased was lying near Palladam Four Road. When he did not return home, she came in search of her husband and found him lying on the road fully drunken. She took him to Udumalai Bus stop. She boarded the respondent bus expecting her husband to follow her, but due to his inebriate state, her husband was not able to board the bus and fell down and got crushed under the moving bus. After the complaint and death of her husband, she came out with other theory that she and her husband went to the temple and to return home, they boarded the bus, the driver without notice her husband on the foot board and yet to enter the bus, moved the bus and caused the accident. In fact, the accident occurred purely due to the negligence of the transport bus driver. On the blank signed paper, police had filled up the complaint with wrong information.

4. After considering the claim petition relying upon the F.I.R and the evidence of D.W.1 Sundarrajan, the driver of the bus, the Tribunal concluded that the driver of the bus is not responsible for the accident and held that the deceased is responsible for the accident. . The deceased in the drunken state had attempted to board a moving bus fell down.

5. Having held so, the Tribunal had also gone into the quantum of compensation the deceased probably entitled. It fixed a sum of Rs.10,28,000/- as total compensation payable to the deceased, but the Tribunal declined to award the said sum for the sole reason that the deceased was 100% responsible for the accident and the driver of the bus is not negligent.

6. Aggrieved by the dismissal of the claim petition, the present appeal is filed.

7. Learned counsel appearing for the appellants would emphatically submit that the Tribunal has erred in not awarding the compensation as fixed, while answering the Issue No.2. The conclusion of the Tribunal that the deceased was solely responsible for the accident is incorrect, when the F.I.R given by P.W.1 retracted by her before the Tribunal and the content of the F.I.R. not being investigated and proved to be right.

8. Per contra, the learned counsel for the respondent Corporation submit that when the claimant herself stated in F.I.R. It is an admission need not to be proved otherwise. The evidence of R.W.1 corroborates the version given by P.W.1 in her F.I.R. When the deceased himself is the cause for the death and contributed for his own death, the Transport Corporation is not liable to pay any compensation.

9. This Court, after perusing the evidence, particularly Ex.P1 F.I.R. And Ex.P2 Post Mortem Report cannot totally rule

out and reject the content found in Ex.P1, F.I.R. The claimant are residents of Vadugampalayam, Tiruchengode. The deceased was working in Kattampatti Branch of Indian Overseas Bank. The accident has occurred at Palladam Four Road Bus Stop. F.I.R was registered on intimation from the hospital. The Police, who recorded the statement of Padmini (P.W.1), has stated that the injured was in full drunken stage and not in a position to give statement. The contention of the claimants is that the police had animosity with them. Therefore, they falsely recorded F.I.R contrary to the facts. This stand is obviously made to get compensation. Be that as it may, for this reason and his contribution, the claimants cannot be totally deprived of compensation, since there is contributory negligence on the part of the bus driver also.

10. This Court is of the view that negligence can be apportioned equally among the deceased and the bus driver. The quantum of compensation, as fixed by the Tribunal Rs.10,28,000, is scaled down by half. Accordingly, award of Rs.5,14,000/- shall be paid to the claimants with 7.5% interest p.a. from the date of filing this claim petition i.e.21.08.2006 till the date of deposit. Transport Corporation is directed to deposit the money within a period of eight weeks from the date of receipt of a copy of this order.

11. The award amount shall be apportioned among the claimants as under:

The first claimant Smt.Padmini, will be entitled to get a sum of Rs.3,00,000/-. Minor claimant, who was 11 years at the time of accident, by this time would have attained majority, will be entitled to get Rs.1,50,000/- and Rs.64,000/- is awarded to the mother of the deceased with proportionate interest. On such deposit, the claimants shall withdraw their respective shares on appropriate application.

12. In the result, the Civil Miscellaneous Appeal is partly allowed. No costs.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

vri

To

Motor Accidents Claims Tribunal,

I Additional District Judge, Salem.

+lcc to Mr.K.Selvaraj , Advocate SR.No. 39039

+lcc to Mr.A.Sundaravathanan, Advocate SR.No. 39104

CMA No.728 of 2016

A.SK(07.04.2021)