



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 09.12.2020

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THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A(MD) No.1251 of 2009

and

M.P.(MD)No.2 of 2009

and

C.M.A(MD)No.618 of 2010

and

M.P(MD)No.1 of 2010

C.M.A(MD)No.1251 of 2009

Southern Railway,
Having office at Moor Market Complex,
Chennai-3, through its
General Manager. .. 2nd Respondent/Appellant

vs.

1.Indra
2.N.V.Sutdarsan
3.Minor.Priya Dharshene
4.Anantha Lakshmi

(Minor 3rd respondent represented
through mother and next friend
1st respondent herein) ...1 to 4 Petitioners/Respondents 1 to 4

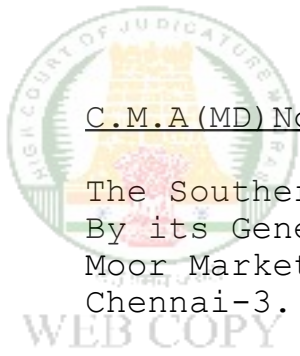
5.State Road Transport Corporation,
Dindigul through its
Managing Director.1st Respondent/5th Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988, to call for the records in M.C.O.P.No.1892 of 2001 on the file of the III Additional Subordinate Judge/MACT Madurai and set aside the Judgment and award passed by an order dated 30.07.2004.

For Appellant :Mr.N.Ananthapadmanaban

For R1 to R4 :Dismissed vide order dated 15.06.2018

For R5 : Mr.M.Prakash



C.M.A(MD)No.618 of 2010

The Southern Railway,
By its General Manager,
Moor Market Complex,
Chennai-3.

... Appellant/2nd Respondent

vs.

1.N.V.Sudharson

... 1st Respondent/Petitioner

2.State Road Transport Corporation,
Dindigul through its Managing Director,
Dindigul.

... 2nd Respondent/1st Respondent

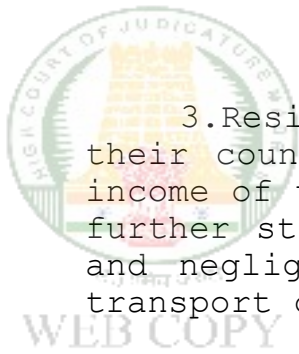
Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988, against the Fair and Decreetal order dated 30.07.2004 made in M.C.O.P.No.898 of 2001 on the file of the III Additional Sub Court, Madurai.

For Appellant	:Mr.A.Haja Mohideen
For R1	:Mr.R.Aravindan
For R2	:Mr.M.Prakash

C O M M O N J U D G M E N T

Challenging the Common Award passed by the Motor Accidents Claims Tribunal- III Additional Subordinate Judge, Madurai in M.C.O.P.No.1892 and 898 of 2001, dated 30.07.2004, the appellant/Southern Railway has filed these appeals.

2. Brief facts of the case are that on 13.08.1998 at 02.05 hours, when the deceased N.K.Vijayan was travelling in the bus bearing Registration No.TN-57-N-0941 along with his son from Madurai to Salem, the driver of the bus drove it in a rash and negligent manner without taking necessary precaution and when the bus is about to cross a railway level crossing situate in between Morthipalayam and Karur, dashed against the level crossing gate and thereafter, against the Express Train No.6711 and as a result, the bus was thrown away by the speeding train. In the said impact, the deceased N.K.Vijayan and several other passengers travelled in the bus died and his son sustained injuries. In this regard, a case in Cr.No.255 of 2006 under Section 304(A) has been registered by the jurisdictional police. Alleging that the accident had taken place due to the rash and negligent driving of the driver of the bus, the legal heirs, namely, the wife, children and mother of the deceased laid a petition, claiming compensation of Rs.10,00,000/- (Rupees Ten Lakhs only) and the injured claimant laid a petition claiming compensation of Rs.4,00,000/- (Rupees Four Lakhs only).



3. Resisting the claim, the appellant Southern Railway filed their counter disputing the manner of accident, age, avocation and income of the deceased and its liability to pay the compensation and further stated that the accident had occurred only due to the rash and negligent driving of the driver of the bus belonging to the transport corporation.

4. Resisting the claim, the fifth respondent respondent Transport Corporation filed their counter stating that the accident occurred only due to the negligence of the Gate Keeper of the Southern Railway and they have not liable to pay any compensation.

5. On the side of the claimants, P.W.1 to P.W.3 were examined and Ex.P1 to Ex.P12 were marked. No witness was examined and no documents were marked on the said of the appellant.

6. The Tribunal, after considering the oral and documentary evidence held that the employees of both the bus and the Southern Railway were responsible for the accident and awarded compensation of Rs.7,21,240/- and 2,01,000/- respectively along with interest at the rate of 9% p.a., and fixed the liability on both sides at 50 : 50. Challenging the 50% liability fixed, the appellant has filed the present appeal and has not disputed the quantum awarded by the Tribunal.

7. Heard the learned counsel appearing on either side and perused the materials available on record.

8. The Tribunal gave a specific finding that the accident occurred on account of the negligence of both employees of the appellant and the Transport Corporation and fixed the liability on both sides at 50 : 50. From perusal of records, it is seen that both the drivers are equally responsible for the accident and therefore, I find no ground to upset the findings of the Tribunal.

9. A Perusal of the judgment of the Tribunal in M.C.O.P.No.1892 of 2001 would show that the Tribunal after considering the evidence of the witnesses and Exhibits held that the deceased died at the age of 47 years and his monthly income was Rs.12,455/- (Rupees Twelve Thousand Four Hundred and Fiftyfive only). After deducting the personal expenses of the deceased, the tribunal has awarded a sum of Rs.5,97,850/- (Rupees Five Lakhs Ninetyseven Thousand Eight Hundred and Fifty only) to the claimants towards loss of income, a sum of Rs.20,000/- (Rupees Twenty Thousand only) towards loss Consortium to the first claimant, a sum of Rs.4,000/- (Rupees Four Thousand only) each towards loss of love and affection to the claimants 2 & 3, a sum of Rs.10,000/- (Rupees Ten Thousand only) towards loss of love and affection to the fourth claimant and Rs.2,000/- (Rupees Two Thousand only) towards funeral expenses and totally awarded a sum of Rs.7,21,240/- (Rupees Seven Lakhs Twenty



The Tribunal has awarded a sum of Rs. 2,01,000/- (Rupees Two Lakhs One Thousand only) to the injured claimant along with interest at the rate of 9% p.a., The Tribunal has awarded a just and reasonable compensation.

10. In that view, these Civil Miscellaneous Appeals are dismissed, as devoid of merit. Since the appeals are dismissed, the appellant and the Transport Corporation are directed to deposit the entire award amount (50-50) in both appeals with accrued interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit being made, the claimants 1,2 & 4 in C.M.A (MD)No.1251 of 2009 are permitted to withdraw the award amount as per the ratio of apportionment made by the Tribunal, by making necessary application before the Tribunal. The Tribunal shall deposit the share of the minor third claimant in C.M.A(MD)No.1251 of 2009 in any one of the Nationalized bank in a Fixed Deposit initially for a period of three years and renewable thereafter, till the minors attain majority. The mother of the minor claimants/1st respondent is permitted to withdraw the accrued interest once in three months directly from the bank. The claimant in 618 of 2010 is permitted to withdraw the award amount by making necessary application before the Tribunal. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CO)

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/ /2021

Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The Motor Accident Claims Tribunal,
III Additional Sub Court,
Madurai.



2.The Record Keeper, (2 copies)
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

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C.M.A(MD) No.1251 of 2009

and

C.M.A(MD) No. 618 of 2010

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VB (18.02.2021) 5P 4C