



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A. (MD) No.243 of 2009

and

M.P. (MD) No.1 of 2009

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Tamil Nadu State Transport Corporation
Madurai Limited, Nagercoil Region
represented by its Managing Director
Nagercoil

... Appellant/Respondent

-vs-

1.Madasamy

2.Minor.Vetrivel

3.Minor.Petchiammal

4.Minor.Marimuthu

... Respondents/Petitioners

[Minor petitioners through their
father and next friend R1
Madasamy]

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the Judgment and Award made in M.C.O.P.No.1270 of 2006, dated 22.03.2007, on the file of the learned Motor Accident Claims Tribunal, 2nd Additional District Judge, Tirunelveli.

For Appellant : Mr.S.Royce Emmanuel

For Respondents : Mr.T.Selvakumaran for R1
R2 to R4 rep.by R1

J U D G M E N T

Heard Mr.S.Royce Emmanuel, learned counsel appearing for the appellant - Transport Corporation and Mr.T.Selvakumaran, learned counsel appearing for the respondents / claimants and carefully perused the materials available on record.

2. The appellant - Transport Corporation has preferred this civil miscellaneous appeal aggrieved over the Judgment and Award, dated 22.03.2007, passed in M.C.O.P.No.1270 of 2006, by the Motor Accident Claims Tribunal / 2nd Additional District Court, Tirunelveli.

3. The first respondent is the husband and the respondents 2 to 4 are the children of the deceased Mariammal. They filed the

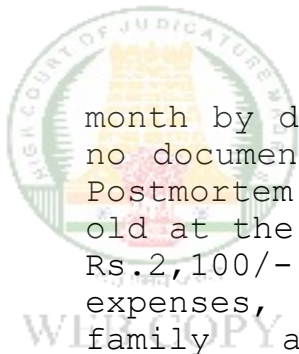


claim petition seeking a compensation of Rs.5,00,000/-. It is their case that on 29.09.2006, at about 03.30 p.m., the deceased Mariammal along with her son Vetrivel / second claimant was walking on the left side mud portion of Tirunelveli - Nagercoil Main Road at Jothipuram towards north direction. At that time, a Bus bearing registration No.TN74 N0628 belonging to the appellant - Transport Corporation, which was coming behind in a rash and negligent manner, hit against the deceased. In the said accident, the deceased sustained multiple serious head injuries and was admitted in Tirunelveli Medical College as in-patient, but, unfortunately, she succumbed to the injuries. Hence, a criminal case was registered by Munneerpallam Police in Crime No.31 of 2006 under Sections 279 and 338 @ 304(A) I.P.C. It is their further case that the deceased was 30 years old at the time of the accident and she was earning Rs.5,000/- per month by doing agriculture coolie and beedi rolling works.

4. The claim petition was opposed by the appellant - Transport Corporation contending that the Bus belonging to the appellant - Transport Corporation has not hit against the deceased, but it was another Bus bearing registration No.TN74 N0738, which was trying to overtake the Bus bearing registration No.TN74 N0628. At that time, a Lorry suddenly came from the opposite direction in a high speed, so, the driver of the Bus bearing registration No.TN74 N0738 drove the vehicle on the extreme left side of the road in order to avoid the accident and in that process, the deceased was hit. They have also disputed the age, avocation and income of the deceased.

5. In order to prove the negligence, the second claimant Vetrivel was examined as P.W.2, who in his evidence, has stated that on 29.01.2006, at 03.30 p.m., he along with his deceased mother was going to School and when they reach Alangulam Bus Stop, this accident had taken place and it was due to the negligence of the driver of the appellant - Transport Corporation Bus. The driver of the Bus, namely, Chellappan, who gave evidence as R.W.1, has stated that the accident occurred unexpectedly and there was no negligence on his part. Since no complaint was preferred by him and a criminal case was registered against him, which is evident from the first information report (Ex.P1) and the charge sheet (Ex.P2), the Tribunal chose to disbelieve the evidence of R.W.1 and held that he was responsible for the accident. The Tribunal has also referred rough sketch (Ex.P3) and observation mahazar (Ex.P4) filed in the criminal case. I find no valid ground to interfere with the finding of the Tribunal with regard to negligence on the part of the driver of the appellant - Transport Corporation Bus and the same is confirmed.

6. Insofar as quantum is concerned, Madasamy, husband of the deceased Mariammal, who was examined as P.W.1, has deposed that his deceased wife was 30 years old and she was earning Rs.5,000/- per



month by doing agriculture coolie and beedi rolling works, however, no document was marked to substantiate the income of the deceased. Postmortem Certificate (Ex.P6) shows that the deceased was 30 years old at the time of the accident. The Tribunal fixed notional income Rs.2,100/- per month and after deducting 1/3rd for her personal expenses, held that she would have contributed Rs.1,400/- to her family and by applying the multiplier "18", awarded Rs.3,02,400/- (Rs.1,400/- X 18 X 12). In addition, the Tribunal awarded Rs.4,000/- towards funeral expenses; Rs.10,000/- towards loss of consortium to the first respondent / claimant and Rs.15,000/- towards loss of love and affection to the respondents / 2 to 4 / claimants; Rs.5,000/- towards shock, and mental agony; Rs.2,500/- towards loss of service and Rs.2,500/- towards loss of guidance to the respondents 2 to 4 / claimants. Thus, in total, the Tribunal has awarded Rs.3,41,400/- along with interest at the rate of 6% per annum as compensation, which in my considered opinion, is fair and reasonable and it does not warrant any interference of this Court.

7. In that view, the civil miscellaneous appeal is dismissed, as devoid of merits. Since the appeal is dismissed, the appellant - Transport Corporation is directed to deposit the entire award amount 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, the respondents / claimants, including the minor claimants, since they would have attained majority by this time, are permitted to withdraw their respective shares in the award amount, less the amount already withdrawn, if any, together with proportionate interest and costs, as per the ratio of apportionment made by the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CO)

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/ /2021

Sub Assistant Registrar(CS)

Note :

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To:

1.The 2nd Additional District Judge,
Motor Accident Claims Tribunal,
Tirunelveli.

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

+1cc to Mr.T.Selvakumaran, Advocate Sr.No.25052

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NR (04/01/2020) 4P : 5C