



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 09.12.2020

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WEB COPY

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A(MD) No.684 of 2013

and

M.P.(MD)No.1 of 2013

Tamil Nadu State Transport Corporation,
Diviaion-4, Dindigul,
Through its Divisional Manager .. Appellant/1st Respondent

vs.

1.Hemalatha
2.Minor Sankar Jayaram
3.Minor Jeya Venkatesh
4.Minor Vigneshwaran
(Minor Respondents are rep. through
their Mother/Guardian-1st
respondent herein) .. Respondents 1 to 4 /Petitioners

5.The General Manager,
Southern Railway,
Chennai.

6. S.S.Saraswathy Ammal ..Respondents 5&6/Respondents 2 & 3

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988, to set aside the judgment and decree dated 15.09.2007 by the Motor Accidents Claims Tribunal-Additional District Sessions Court cum Fast Track Court No.2, Madurai, in M.C.O.P.No.12 of 1999.

For Appellant :Mr.M.Prakash

For R1 to R4 & R6 :No Appearance

For R5 : Mr.S.Manohar

J U D G M E N T

Challenging the liability and negligence fixed by the Motor Accidents Claims Tribunal/Additional District Sessions Court-cum-

<https://hcservices.ecourts.gov.in/hcservices/>



Fast Track Court No.2, Madurai in M.C.O.P.No.12 of 1999, dated 15.10.2007, the appellant/Transport Corporation has filed this appeal.

2. Brief facts of the case are that on 13.08.1998 at 02.05 hours, when the deceased was driving in the bus bearing Registration No.TN-57-N-0941 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 and several other passengers travelled in the bus died and 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 and the employee of the Southern Railway, the legal heirs, namely, the parents, wife, children of the deceased laid a petition, claiming compensation of Rs.8,00,000/- (Rupees Eight Lakhs only).

3. Resisting the claim, the appellant fifth respondent 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 appellant 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 & P.W.2 were examined and Ex.P1 to Ex.P5 were marked. On the side of the respondents, R.W.1 & R.W.2 were examined and Ex.R1 to Ex.R4 were marked.

6. The Tribunal, after considering the oral and documentary evidence, held that the driver of the Transport Corporation was responsible for the accident and awarded compensation of Rs.4,48,000/- (Rupees Four Lakhs Forty Eight Thousand only) along with interest at the rate of 7.5% p.a., and fixed the liability on the appellant Transport Corporation. Challenging the 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.



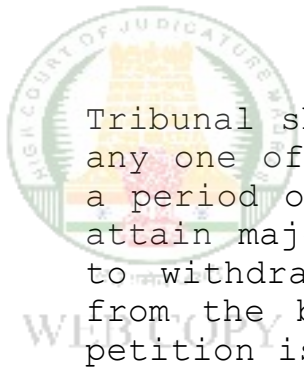
8. A Perusal of the judgment of the Tribunal would show that the Tribunal, after considering the evidence of the witnesses and Exhibits, held that the deceased died at the age of 45 years and fixed his monthly income at Rs.3,000/- (Rupees Three Thousand Only) after deducting 1/3rd for his personal and living expenses and by applying multiplier '15', the Tribunal has awarded a sum of Rs.3,60,000/- (Rupees Three Lakhs Sixty Thousand only) to the claimants towards loss of income, a sum of Rs.15,000/- (Rupees Fifteen Thousand only) towards loss Consortium to the first claimant, a sum of Rs.10,000/- (Rupees Ten Thousand only) to the first claimant towards loss of love and affection, a sum of Rs.30,000/- (Rupees Thirty Thousand only) towards loss of love and affection to the claimants 2 to 4, a sum of Rs.5,000/- (Rupees Five Thousand only) to the third respondent/6th respondent towards love and affection, a sum of Rs.3,000/- (Rupees Three Thousand Only) for funeral expenses and a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) towards Loss of Estate and totally awarded a sum of Rs.4,48,000/- (Rupees Four Lakhs Forty Eight Thousand Only) with interest at 7.5% p.a.

9. It is seen from the records that in respect of the same accident various claim petitions were filed before the various Tribunal, however, the said fact has not been brought to the knowledge of the concerned Tribunal as a result, the liability fixed by the Tribunal varies from case to case. Aggrieved over the same, the Southern Railway as well as the Transport Corporation filed appeals before this Court challenging liability fixed by the Tribunal.

10. In the instant case, the total liability was fixed on the Transport Corporation, challenging the same, the Transport Corporation has come to this Court by way of this appeal.

11. After going through the records, it is seen that both the employees of the appellant and the Southern Railway are responsible for the accident and hence, the liability is to be fixed equally on both the Transport Corporation as well as the Southern Railway. In view of the same, this Court fixed the liability on both sides at 50 : 50.

12. In that view, this Civil Miscellaneous Appeal is partly allowed. The appellant and the Southern Railway are directed to deposit the entire award amount equally 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 first claimant and the third respondent in the claim petition 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 claimants 2 to 4 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 guardian of the minor claimants is permitted to withdraw the accrued interest once in three months directly from the bank. No costs. Consequently, connected miscellaneous petition is 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.Motor Accidents Claims Tribunal/
Additional District Sessions Court cum
Fast Track Court No.2,
Madurai.

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

+1 cc to Mr.S.Manohar , Advocate SR.No.25045

C.M.A (MD) No.684 of 2013
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KM (20.01.2021) 4P 5C