



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.766 of 2014

and

M.P.(MD)No.1 of 2014

The General Manager,
Southern Railway,
Indian Railways,
Chennai.

.. 2nd Respondent/Appellant

vs.

1.Periyapandi
2.Alagammal
3.Minor Chitra
(Minor represented by her
guardian and grant father
1st Respondent)

...Respondents 1 to 3/Petitioners

4.Ramuthai
5.Minor Chellapandi
(Minor Chellapandi represented
by his mother and guardian
4th Respondent)

6.The Managing Director,
Tamil Nadu State Transport
Dindigul Branch,
Railway Feeder Road,
Dindigul.

...Respondents 4 to 6/ Respondents
3, 4 & 1

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988, to set aside the fair order, Ex order award passed on 22.01.2011 by the Motor Accidents Claims Tribunal-I Additional District Judge, Madurai in M.C.O.P.No.877 of 2003.

For Appellant :Mr.S.Manohar

For R1 to R3 :Mr.J.Lawrance

For R4 & R5 :Mr.P.Thiraviam

For R6 :Mr.M.Prakash



J U D G M E N T

Challenging the liability and negligence fixed by the Motor Accidents Claims Tribunal-I Additional District Judge, Madurai in M.C.O.P.No.877 of 2003, dated 22.01.2011, the appellant/Southern Railway has filed this appeal.

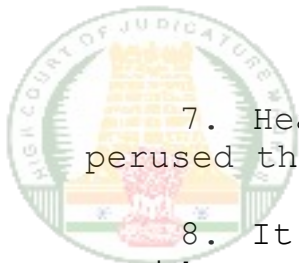
2. Brief facts of the case are that on 13.08.1998 at 02.05 hours, when the deceased Karuppiyah was travelling in the bus bearing Registration No.TN-57-N-0941, the driver of the bus drove it in a rash and negligent manner without taking necessary precaution and when the bus is about to cross a railway 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 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, the legal heirs, namely, the parents, wife, children of the deceased laid a petition, claiming compensation of Rs.7,00,000/- (Rupees Seven 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 second 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 was examined and Ex.P1 to Ex.P8 were marked. On the side of the respondents, R.W.1 and R.W.3 were examined and Ex.R1 to Ex.R20 were marked.

6. The Tribunal, after considering the oral and documentary evidence, held that the driver of the Southern Railway was responsible for the accident and awarded compensation of Rs.3,29,200/- (Rupees Three Lakhs Twenty Nine Thousand Two Hundred only) along with interest at the rate of 7.5% p.a., and fixed the liability on the appellant Southern Railway. 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.

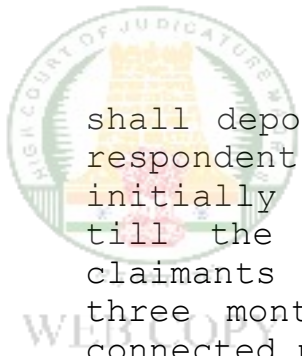
8. It is seen from the records that in respect of the same accident various claim petitions were filed before the various Tribunal, however, the said fact has not been brought to the knowledge of the concerned Tribunal as a result, the liability fixed by the Tribunal varies from case to case. Aggrieved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

9. In the instant case, the total liability was fixed on the Southern Railway, challenging the same, the Southern Railway has come to this Court by way of this appeal.

10. After going through the records, it is seen that both the employees of the appellant and the Transport Corporation 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.

11. 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 30 years and fixed his notional income after deducting his personal expenses at Rs.1200/- (Rupees Thousand Two Hundred only) and by applying multiplier '18', the Tribunal has awarded a sum of Rs.2,59,200/- (Rupees Two Lakhs Fifty Nine Thousand Two Hundred Only) to the claimants towards loss of income, a sum of Rs.10,000/- (Rupees Ten Thousand only) towards loss Consortium to the third respondent, a sum of Rs.10,000/- (Rupees Ten Thousand only) to the claimants towards loss of love and affection, a sum of Rs.5,000/- (Rupees Five Thousand only) towards funeral expenses and a sum of Rs.5,000/- (Rupees Five Thousand only) towards transport charges and totally awarded a sum of Rs.3,29,200/- (Rupees Three Lakhs Twenty Nine Thousand Two Hundred only) with interest at 7.5% p.a. The amount appears to be fair and reasonable and it is confirmed.

12. In that view, this Civil Miscellaneous Appeal is partly allowed. The appellant and the Transport Corporation 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 claimants 1 & 2/respondents 1 & 2 and fourth respondent 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 and the fifth respondent 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 guardians of the minor claimants are 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)

// True Copy //

/ /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 I Additional District Judge,
Motor Accident Claims Tribunal,
Madurai.
- 2.The Record Keeper-2 copies
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1 cc to Mr.J.Lawrance , Advocate SR.No.25215

+1 cc to Mr.S.Manohar , Advocate SR.No.25044

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KM (21.01.2021) 4P 6C