



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.1116 of 2017

and

C.M.P. (MD) No.11365 of 2017

The General Manager,
Southern Railway Park Town,
Chennai-600 002.

.. Appellant/2nd Respondent

vs.

1.M.Marimuthu

... 1st Respondent/Petitioner

2.The Managing Director,
Tamil Nadu State Transport Corporation,
(Madurai Division-IV),
Dindigul.

...2nd Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988, to set aside the award passed by the learned IV Additional District Judge, MACT, Madurai dated 20.11.2014 in M.C.O.P.No.448 of 2003 by allowing this appeal against this appellant in fixing the negligent/liability and payment of compensation.

For Appellant :Mr.A.Haja Mohideen

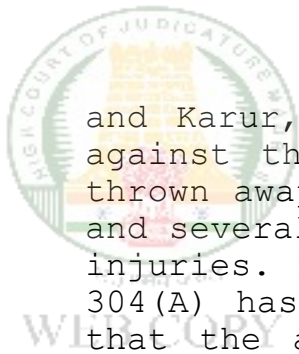
For R1 :Mr.P.T.Ramesh Raja

For R2 : Mr.M.Prakash

J U D G M E N T

Challenging the liability and negligence fixed by the Motor Accidents Claims Tribunal-IV Additional District Judge, Madurai in M.C.O.P.No.448 of 2003, dated 20.11.2014, 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 Sivagami Sundari 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 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 husband of the deceased laid a petition, claiming compensation of Rs.5,00,000/- (Rupees Five 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 & P.W.2 were examined and Ex.A1 to Ex.P5 were marked. On the side of the respondents, R.W.1 and 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 employees of both the bus and the Southern Railway were responsible for the accident and awarded compensation of Rs.5,17,500/- (Rupees Five Lakhs Seventeen Thousand Five Hundred only) along with interest at the rate of 7.5% p.a., and fixed the liability of 70% on the transport corporation and 30% on the Southern Railway. Challenging the 30% 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 30 : 70. It is appropriate to note that arising out of the same accident, claim petitions came to be filed before various Motor Accidents Claims Tribunal and different findings have been rendered. In some cases entire liability was fastened on Transport Corporation and 50 : 50 negligence was fixed by some Tribunals, against those findings no appeal was filed. Therefore, this Court is not inclined to interfere with findings on negligence in these petitions and appeal.



9. 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 27 years and fixed her notional income at Rs.2,500/- (Rupees Two Thousand Five Hundred only). After deducting her personal expenses 50% and adding future prospects 50% and by applying multiplier '17', the Tribunal has awarded a sum of Rs.3,82,500/- (Rupees Three Lakhs Eighty Two Thousand Five Hundred only) to the claimants towards loss of income, a sum of Rs.1,00,000/- (Rupees One Lakh only) towards loss Consortium to the claimant, a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) towards funeral expenses and Rs.10,000/- (Rupees Ten Thousand only) towards transportation and totally awarded a sum of Rs.5,17,500/- (Rupees Five Lakhs Seventeen Thousand Five Hundred only) with interest at 7.5% p.a. The award appears to be fair and reasonable.

10. In that view, this Civil Miscellaneous Appeal is dismissed, as devoid of merit. Since the appeal is dismissed, the appellant and the second respondent are directed to deposit the entire award amount as directed by the Tribunal 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 claimant is permitted to withdraw the award amount by making necessary application before the Tribunal. 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 Motor Accident Claims Tribunal,
IV Additional District Judge,
Madurai.

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



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

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+1cc to Mr.P.T.Ramesh Raja, Advocate Sr.No.24832

C.M.A (MD) No.1116 of 2017
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