

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	22.12.2020
DELIVERED ON	06.01.2021

CORAM

THE HONOURABLE MR.JUSTICE G.ILANGOVAN

C.M.A(MD) No.1121 of 2010

and

MP(MD)No.1 of 2010

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

.. Appellant/4th Respondent
in M.C.O.P

vs.

1.Murugan
2.Muthulakshmi
[2nd respondent is dismissed vide order
dated 29.11.2017]

.. 1st and 2nd Respondents/1st and 2nd
Petitioners in M.C.O.P

3.The Managing Director,
Tamil Nadu State Transport Corporation,
(Madurai Division-3) Limited,
Nagercoil.

4.P.Mohan

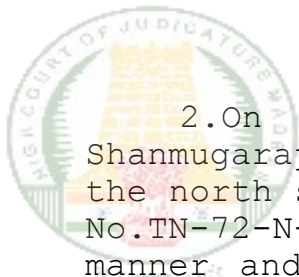
5.The Branch Manager
New India Assurance Company Limited,
Nagercoil. .. 3rd to 5th Respondents/Respondents 1 to 3
in M.C.O.P

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988, against the Judgment and decree, dated 20.06.2006 made in M.C.O.P.No.143 of 2004, on the file of the Motor Accident Claims Tribunal cum Chief Judicial Magistrate, Tirunelveli.

For Appellant : Mr.M.Prakash
For R1 : Mr.M.Kumar
For R2 : Dismissed
(vide order dated 29.11.2017)
For R3 & R4 : No appearance
For R5 : Mr.S.Sivathilagar

J U D G M E N T

Challenging the award and ex-order passed by the Motor Accident Claims Tribunal cum Chief Judicial Magistrate in M.C.O.P.No.143 of 2004, dated 20.06.2006, the appellant/4th respondent has filed this appeal.



2.On 09.08.2002, at about 05.30 p.m., the deceased-Rajan @ Shanmugarajan was driving a Tempo from Palayamkottai to Nagercoil in the north side direction. At that time, the bus bearing Registration No.TN-72-N-0641 was driven by its driver in a rash and negligent manner and dashed against the Tempo Driver, who is the deceased, sustained injuries. So, because of the accidental injuries, he died on the spot. At the time of the accident, he was aged about 25 years. The claimants are the parents of the deceased. In respect of the accident, a case in Crime No.212 of 2015 was registered on the file of the Panagudi Police Station and the respondents 1 and 2/petitioners claimed a compensation amount of Rs.7,00,000/-. The claim petition was filed against the owner of the Tempo Van, which was driven by the deceased as well as against the Transport Corporation.

3.The case of the 5th respondent/3rd respondent is that the accident took place only due to the rash and negligent driving on the part of the bus driver. The case of the appellant/4th respondent is that when the bus was stopped at about 05.30 p.m., near Ramalingapuram, the driver of the Tempo Van, came in a rash and negligent manner and hit the bus. So, only the deceased was responsible for the accident.

4.Before the Tribunal, on the side of the respondents 1 and 2/petitioners, two witnesses were examined and four documents marked. On the side of the fourth respondent/appellant herein, one witness was examined and no document marked.

5.The accident is not disputed by the appellant herein. The only contention that has been raised, is that only the deceased was responsible for the accident.

6.Regarding the occurrence, P.W.2-Eye Witness was examined. He was also the first informant to the police regarding the occurrence. He would say that he was riding his two wheeler behind the Van driven by the deceased and when the Van was nearing the place of occurrence, the appellant/fourth respondent's vehicle driver drove the bus in a rash and negligent manner and hit against the Van. It is also the version in Ex.P.1 and Ex.P.2-First Information Report. Contrary to his evidence, R.W.1, who was the Conductor in the appellant/4th respondent vehicle at the time of the accident, would say that on seeing the Van, which was coming in the opposite direction in a rash and negligent manner, the driver of the bus stopped the bus and in spite of that because of the overspeed, the Van dashed against the bus. If that is so, the driver of R.W.1 could have lodged a complaint immediately. After the occurrence, only, P.W.2 lodged a complaint. Moreover, both the vehicles were proceeding in opposite directions. It is admitted by R.W.1 that the accident took place only on the western side of the road. The Van was proceeding from north to south and the appellant/4th respondent's vehicle was proceeding in the opposite direction. So, from the very



nature of occurrence, it is seen that the appellant/fourth respondent vehicle's driver and the deceased were equally responsible for the accident. The police also filed the final report only against the appellant/fourth respondent vehicle's driver. So, the evidence of R.W.1 cannot be accepted and the Tribunal has also found that only because of the rash and negligent driving on the part of the driver of the appellant/fourth respondent's vehicle and the deceased, the accident took place, I find that no reason to differ from the finding.

7.Regarding the compensation, the age of the deceased was fixed as 25 on the basis of the entry in Ex.P.4-driving licence and the date of birth is noted as 14.05.1977. The income of the deceased was fixed at Rs.3,000/- per month. After deducting 1/3rd amount, the Tribunal assessed loss of income as Rs.24,000/-. By taking into account the age, multiplier '15' was adopted. But the proper multiplier is '18'. By considering the age of the claimants, the total loss of income will be Rs.4,32,000/- (Rupees Four Lakhs and Thirty Two Thousand Only) Customary amounts, were also added., such as mental agony, funeral expenses, transport expenses and the total amount was fixed at Rs.4,56,000/- (Rupees Four Lakhs and Fifty Six Thousand only). Since the contributory negligence on percentage was fixed, half of the amount of Rs.2,28,000/- was ordered to be paid by the appellant/fourth respondent to the claimants.

8.In the result, this Civil Miscellaneous Appeal is dismissed. The award passed by the Tribunal in M.C.O.P.No.143 of 2004, on the file of the Motor Accident Claims Tribunal cum Chief Judicial Magistrate, Tirunelveli, dated 20.06.2006, is enhanced to Rs.2,28,000/- (Rupees Two Lakhs and Twenty Eight Thousand Only). The appellant-Transport Corporation is directed to deposit the compensation amount awarded with interest at 7.5 % p.a. from the date of petition, less the amount, if any, already deposited, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the claimant/first respondent is permitted to withdraw the same on making proper application. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

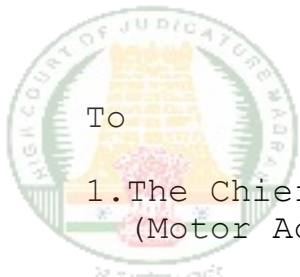
Assistant Registrar (CS-II)

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/ /2021

Sub Assistant Registrar(CS)

sj i



To

1.The Chief Judicial Magistrate,
(Motor Accident Claims Tribunal), Tirunelveli.

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

+1 CC to Mr.M.PRAKASH, Advocate (SR-544[F] dated 07/01/2021)

Judgment Made in
C.M.A (MD) No.1121 of 2010
06.01.2021

VB (09.02.2021) 4P 5C