



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.12.2021

CORAM :

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THE HONOURABLE MRS.JUSTICE S.ANANTHI

C.M.A. (MD)No.1261 of 2011

and

M.P (MD)No.3 of 2011

United India Insurance Co., Ltd.,
New No.788, First Floor,
Indian Building,
Coimbatore - 18,
Coimbatore District.

...Appellant/Respondent No.2

Vs.

1.Kavitha
2.Minor Azhagu Gayathri
3.Minor Muthuraman
4.Sornam

...Respondent Nos.1 to 4/Petitioners

5.P.Periakaruppan

...5th Respondent / 1st Respondent

6.Tamil Nadu State Transport Corporation,
Rep. by its
Administrative Director,
Kumbakonam Division 3,
Maruthupathi Nagar, Karaikudi,
Sivagangai District.

...6th Respondent/3rd Respondent

*(Minor respondents 2 and 3 represented by
their mother and natural guardian 1st respondent)*

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988, to set aside the order of the Tribunal of Motor Accidents Claims Tribunal Cum Sub Court, Devakottai made in M.C.O.P.No.117 of 2006, dated 03.09.2010.

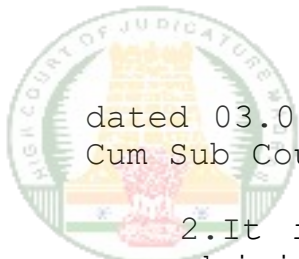
For Appellant :Mr.C.Jawahar Ravindran

For R1 to R3 :Mr.N.Tamilmani

For R4 to R6 :No Appearance

JUDGMENT

This Civil Miscellaneous Appeal is filed by the appellant to set aside the judgment and decree made in M.C.O.P.No.117 of 2006,
<https://hcservices.ecourts.gov.in/hcservices/>



dated 03.09.2010 on the file of the Motor Accidents Claims Tribunal Cum Sub Court, Devakottai.

2.It is a case of fatal accident. On 16.04.2006 the deceased was driving a Minidor Vehicle, bearing Registration No.TN-63-W-7877 towards Managiri with due care and caution observing the traffic rules. When the vehicle came near Regulated Market, at that time the driver of the third respondent, who drove the bus bearing Registration No.TN-29-N-0922 in a rash and negligent manner suddenly came to his right without due care and caution dashed against the Minidor Van. Due to the said accident, the deceased sustained grievous injuries and died.

3.The claimants have filed a claim petition in M.C.O.P.No.117 of 2006 on the file of the Motor Accidents Claims Tribunal Cum Sub Court, Devakottai, seeking compensation of Rs.10,00,000/-.

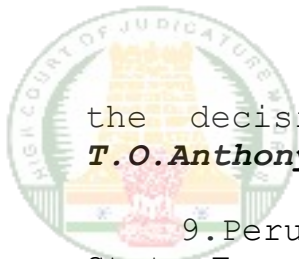
4.Before the Tribunal, on the side of the claimants, two witnesses were examined as P.W.1 and P.W.2 and marked seven documents as Exs.P.1 to P.7. On the side of the respondents, one witness was examined as R.W.1 and one document was marked as Ex.R1.

5.The Tribunal, after considering the pleadings, oral and documentary evidences and the arguments of the counsel for the claimants and the respondents and also on appreciating the evidences on record, held that the accident had occurred only due to the rash and negligent driving of the driver of the 5th respondent vehicle and directed the appellant herein to pay a sum of Rs.7,01,500/- as compensation.

6.Against which, the appellant/second respondent has filed this present appeal to set aside the award of compensation passed by the Tribunal.

7.Heard Mr.C.Jawahar Ravindran, learned counsel appearing for the appellant and Mr.N.Tamilmani, learned counsel appearing for the respondents 1 to 3. No representation for the respondents R4 to R6.

8.The learned counsel for the appellant/Insurance Company submitted that even according to the claimants, in their petition as well as in their evidence, it is stated that the driver drove the bus in high speed and therefore, he was negligent. The learned counsel pointed out that even if there is a contributory negligence, the contribution of the driver of the lorry is much lesser than the contribution of the driver of the bus. He further submitted that according to the Motor Vehicle Report, both the vehicles damaged on the front side. So it clearly shows that the accident is a head on collision. According to the evidence, only the bus driver is liable for the accident. But the FIR has been falsely registered against the deceased driver. In this regard, the he placed reliance on



the decision of the Hon'ble Supreme Court in the case of ***T.O.Anthony V. Karvarnan and Others*** reported in ***2008 ACJ 1165***.

9.Perusal of the records would show that the driver of the State Transport Corporation contributed much more than the driver of the Minidor Lorry. Therefore, negligence is fixed at 75% towards the driver of the Transport Corporation bus and 25% towards the driver of the Minidor lorry. As far as the quantum is concerned, it is just and reasonable.

10.In the result,

(i)The civil miscellaneous appeal is partly allowed. No costs. The award of the Tribunal is confirmed. Therefore, the present appellant/Insurance Company is liable to pay only 25% and the 6th respondent/State Transport Corporation is directed to pay 75% of the compensation awarded by the Tribunal together with proportionate interest at the rate of 6% interest from the date of appeal till the date of payment to the credit of MCOP.No.117 of 2006 on the file of the Motor Accident Claims Tribunal / Sub Court, Devakottai within a period of six weeks from the date of receipt of a copy of this order.

(ii) The learned counsel appearing for the present appellant - United India Insurance Company Limited submitted that they have already deposited 50% of the entire compensation awarded by the Tribunal. Hence, they are permitted to withdraw the balance (25% of the compensation awarded by the Tribunal together with proportionate interest), after following due process of law.

(iii) The respondents 1 and 4 herein are permitted to withdraw their share of compensation, as apportioned by the Tribunal, after following due process of law.

(iv) The second and third respondents herein are minor, and therefore, their share of compensation amount, as apportioned by the Tribunal, is ordered to be deposited in any one of the nationalized bank, in a Fixed Deposit, initially for a period of three years, renewable thereafter, until they attain majority, and the first respondent herein is permitted to withdraw the interest directly from the bank, once in three months in order to maintain the minors. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

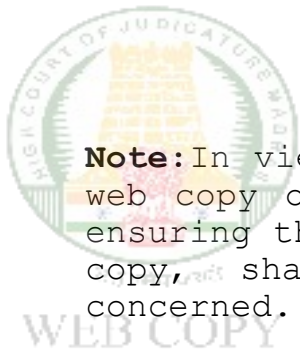
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/ /2022

Sub Assistant Registrar (CS)

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



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 Accidents Claims Tribunal Cum Sub Court,
Devakottai.

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

+1 CC to Mr.N.TAMILMANI, Advocate (SR-37651[F] dated 07/12/2021)

Judgment made in
C.M.A. (MD)No.1261 of 2011
and
M.P (MD)No.3 of 2011
07.12.2021

MK/25.01.2022/4P/5C