



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.01.2021

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A. (MD) No.255 of 2011

and

M.P. (MD) No.1 of 2011

WEB COPY

The Managing Director
Tamil Nadu State Transport
Corporation (Madurai) Ltd.,
Nagercoil Region, Nagercoil

... Appellant/1st Respondent

-vs-

1.Subramaniam

2.Manikandan

3.Murugappan

4.Subramania Pillai

5.Petchiammal

6.Sri Kumaran Thambi

7.The Oriental Insurance Company Ltd.,
Rep. Through its Manager
Nagercoil

... Respondents/Petitioners & Respondents 2 to 6

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the Judgment and Award made in M.C.O.P.No.44 of 2003, dated 09.09.2004, on the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Nagercoil.

For Appellant : Mr.D.Sivaraman

For Respondents : Mr.C.K.M.Appaji for R1, R2 & R5
R3 & R4 - Died(vide Memo file in USR 5966
dated 12/12/2017)
No appearance for R6
Mr.C.Jawahar Ravindran for R7

J U D G M E N T

This civil miscellaneous appeal is directed against the Judgment and Award, dated 09.09.2004, passed in M.C.O.P.No.44 of 2003, by the Motor Accident Claims Tribunal / Chief Judicial Magistrate Court, Nagercoil.



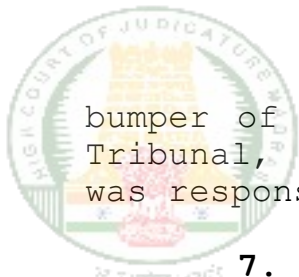
2. The sons of the deceased Murugan alias Sankaranarayana Pillai filed the claim petition seeking compensation of Rs.10,00,000/-. According to the claimants, the deceased was a flower merchant and on 31.12.2002 at 09.30 a.m., he travelled in an Auto bearing registration TN74 Y4174 along with his goods (flower). At that time, a Bus belonging to the appellant - Transport Corporation came in a rash and negligent manner and rammed the Auto. In the accident, the driver of the Auto died on the spot and the Auto was also completely got damaged. The deceased, who sustained grievous injuries, was immediately taken to C.S.I.Hospital, Neyyur and the Doctor declared him brought dead and hence, a complaint was lodged and the same was registered at Eraniel Police Station in Crime No.1182 of 2002 under Sections 279, 337 and 304(A) I.P.C., against the driver of the Bus. The claimants have also impleaded the parents of the deceased as respondents 3 and 4 and the owner and insurer of the Auto respondents 5 and 6 and in the claim petition.

3. Before the Tribunal, the claimants examined two witnesses and marked ten documents and on the side of the Transport Corporation, the driver of the Bus was examined as R.W.1 and no document was marked.

4. On appreciation of the evidence adduced by the parties, the Tribunal held that the driver of the Bus was responsible for the accident and awarded compensation of Rs.6,17,000/- along with interest at the rate of 9% per annum. Challenging the same, the Transport Corporation has filed the present civil miscellaneous appeal.

5. Heard Mr.D.Sivaraman, learned counsel appearing for the appellant - Insurance Company; Mr.C.K.M.Apaji, learned counsel appearing for the respondents 1, 2 & 5 and Mr.C.Jawahar Ravindran, learned counsel, appearing for the seventh respondent and carefully perused the materials available on record.

6. A perusal of the records would reveal that P.W.2 - Saraswathi was examined as eyewitness to the accident and she has stated that on 31.12.2002, at 09.30 a.m., the Bus belonging to the appellant - Transport Corporation came in a high speed and hit against the Auto, in which the deceased was travelling and after ramming the Auto, it also dashed against a road-side compound wall. To corroborate the evidence of P.W.2, the claimants produced Ex.P1 - Copy of First Information Report, Ex.P2 - Copy of Sketch, Ex.P3 - Copy of Observation Mahazar, Ex.P4 - Copy of Motor Vehicle Inspector's Report and Ex.P7 - Copy of Charge Sheet, which show that a criminal case was registered against the driver of the Bus. R.W.1 - Murugappan, driver of the Bus, in his evidence, has deposed that when he was driving the Bus slowly and carefully, the driver of the Auto, without any signal, turned the vehicle and dashed against the



bumper of the Bus. However, rejecting the evidence of R.W.1, the Tribunal, in my view, has rightly held that the driver of the Bus was responsible for the accident.

7. P.W.1 - Manikandan, in his evidence, has deposed that his father was earning Rs.20,000/- per month by doing flower business and he also produced Ex.P10 - Bill Books to show that the deceased was doing flower business. But, no specific income was stated in Ex.P10. Hence, the Tribunal has taken the income of the deceased at Rs.4,500/- and after deducting 1/3rd for his personal and living expenses, Rs.3,000/- was taken as contribution to the family and accordingly, the yearly income was arrived at Rs.36,000/- (Rs.3,000/- X 12). Ex.P6 - Copy of Postmortem Report shows that the deceased was 44 years old at the time of accident and hence, the Tribunal, by applying multiplier "15", awarded Rs.5,40,000/- (Rs.36,000/- X 15) towards loss of income. In addition, the Tribunal awarded Rs.30,000/- towards mental agony; Rs.20,000/- towards loss of love and affection; Rs.20,000/- towards loss of future life; Rs.2,000/- towards funeral expenses and Rs.5,000/- towards transport expenses. In total, the Tribunal awarded Rs.6,17,000/- along with interest at the rate of 9% per annum as compensation, which in my considered opinion cannot be said to be excessive or exorbitant and hence, the Award passed by the Tribunal does not warrant any interference of this Court.

8. In that view, the civil miscellaneous appeal is dismissed, as devoid of merits. Since the appeal is dismissed, the appellant - Transport Corporation is directed to deposit the entire award amount 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, the claimants are permitted to withdraw their share in the award amount, less the amount already withdrawn, if any, together with proportionate interest and costs, as per the ratio of apportionment made by the Tribunal. It is seen that the fourth respondent died pending this appeal. Hence, the fifth respondent / wife of the fourth respondent is entitled for the share of the fourth respondent and accordingly, she is permitted to withdraw the same. No costs. Consequently, connected miscellaneous petition is closed.

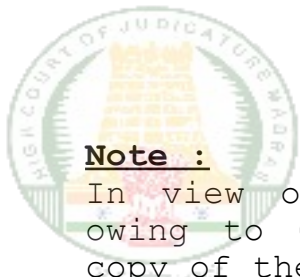
Sd/-

Assistant Registrar (CS-I)

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/ /2021

Sub Assistant Registrar(CS)



Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the Judgment may be utilized for official purposes, but, ensuring that the copy of the Judgment that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

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To:

- 1.The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Nagercoil.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.(2 Copies)

+1 CC to M/s.RAJNISH PATHIYIL, Advocate (SR-500[F] dated 07/01/2021

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AC (CO)

NR (19/01/2020) 4P : 5C