



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 15.07.2021

Pronounced on : 25.10.2021

CORAM

THE HONOURABLE MR. JUSTICE K. MURALI SHANKAR

C.M.A (MD) No.105 of 2020

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The Tamil Nadu State Transport
Corporation Madurai Limited,
Bye Pass Road (Thiruparankunram Road),
Madurai Town, Madurai District,
Represented by its
The Managing Director.

: Appellant / Respondent

Vs.

1.Perumal
2.Selvi

: Respondents / Petitioners

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree in M.C.O.P.No.22 of 2019, dated 01.08.2019 on the file of the Motor Accident Claims Tribunal Additional District Judge (FTC), Theni.

For Appellant : Mr.K.Sudalaiyandi
For Respondents : Mr.S.Vinoth

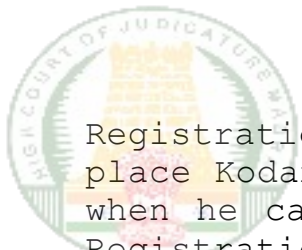
J U D G M E N T

The Civil Miscellaneous Appeal has been preferred under Section 173 of Motor Vehicle Act, 1988, challenging the award passed in M.C.O.P.No.22 of 2019 on the file of the Motor Accident Claims Tribunal/Additional District Judge (FTC), Theni.

2. The appellant/Transport Corporation, who was directed to pay compensation of Rs.19,49,000/- with interest at 7.5% per annum and costs to the respondents/claimants for the death of one Rajaprabu, who died in an accident occurred on 31.01.2019, challenging the liability mulcted on it and also the quantum of compensation awarded by the Tribunal.

3. Admittedly, the first respondent/first claimant is the father and the second respondent/second claimant is the mother of the deceased Rajaprabu.

4. The case of the claimants is that on 31.01.2019, at about 10.15.pm, the deceased Rajaprabu was driving his Abe Auto bearing



Registration No. TN 76 AC 1719 from Bodinayakanur to his native place Kodankipatty in Bodi to Theni Main Road at Bodinayakanur and when he came on the back side of Kaliyamman Temple, a Bus bearing Registration No. TN 57 N 1946, which came in the opposite direction in a rash and negligent manner dashed against the Auto, that the driver Rajaprabu and his friend Surya had sustained serious injuries and died on the spot itself and that the accident was occurred only due to the rash and negligent driving of the bus driver.

5. The defence of the Appellant/Transport Corporation is that on 31.01.2019, the respondent Bus driver drove the bus from Madurai to Thevaram, that while the bus was proceeding near Bodi Kaliyamman Temple, an Auto bearing Registration No. TN 76 AC 1719, came in the opposite direction in a rash and negligent manner and on seeing the Auto, the Bus driver stopped the bus on the extreme left of the road, that the Auto driver, who was in drunken mood, unable to control the vehicle and dashed against the front right side body of the stationed bus, that the accident was occurred only due to the rash and negligent driving of the Auto driver and that the bus driver was not at all responsible for the accident.

6. During enquiry, the claimants, to prove their case, have examined the first claimant Perumal as P.W.1 and one Lakshmanan alleged to be the occurrence witness as P.W.2 and exhibited 6 documents as Ex.P.1 to Ex.P.6. The Appellant/Transport Corporation, has examined 3 witnesses as R.W.1 to R.W.3 and exhibited 3 documents as Ex.R.1 to Ex.R.3.

7. The learned trial Judge, upon considering the evidence, both oral and documentary, came to the conclusion that the accident was occurred only due to the rash and negligent driving of the Bus Driver and mulcted liability on the appellant and passed an award, directing the appellant to pay Rs.19,49,000/- with interest at 7.5% per annum from the date of petition till the date of realization and costs. Aggrieved by the said award, the Appellant/Transport Corporation has come forward with the present appeal.

8. The points for consideration are :-

(i) Whether the Tribunal erred in holding that the bus driver alone was responsible for the accident by discarding the evidence of the driver of the bus and the evidence regarding the manner of accident. ?

(ii) Whether the Tribunal erred in mulcting liability on the appellant/Transport Corporation, despite showing that the driver was under the influence of Alcohol and that he was not having valid license to drive the passenger Auto. ?



(iii) Whether the Tribunal erred in fixing the monthly income of the deceased at Rs.12,000/- in the absence of any acceptable and satisfactory evidence produced by the claimants.?

Point No.1.

9.The learned counsel appearing for the Appellant/Transport Corporation would submit that there is no negligence on the part of the bus driver, but on the other hand, the Auto driver alone was responsible for the accident and that even assuming that the bus driver was also at fault, the Tribunal ought to have held that there was contributory negligence on the part of the Auto driver.

10.It is pertinent to note that the factum of accident and the involvement of the bus and the Auto are not in dispute. But the only dispute is as to who was responsible for the accident. No doubt, as already pointed out, the appellant has examined the bus driver as R.W.1 and in chief examination, he would reiterate the contentions raised in the counter statement. But in cross examination, he would admit that the width of the national high way was 50 feet, that the accident was occurred on the northern extremity of the road and there was a east-west channel situated at a distance of 5 feet from the place of occurrence and that three buses can move at a time in the 40 feet road. No doubt, he would deny the suggestion that he alone had dashed against the Auto and responsible for the accident.

11.The claimants have examined the occurrence witness as P.W.2 and he would say that the deceased Rajaprabu was driving the auto in Bodi to Theni Main Road at Bodinayakanur outer main road from west to east on the left side of the road, that the Bus which came from east to west in a rash and negligent manner, came to the wrong side of the road and dashed against the Auto and that the driver Rajaprabu had sustained serious injury and died on the spot.

12.No doubt, in cross examination, he would admit that in front side of the Auto, there were two persons including the driver Rajaprabu and in the back side there were four persons including P.W.2. As rightly pointed by the learned counsel for the appellant, the deceased Auto driver has violated the Motor Vehicle Rules by taking more persons than be permitted level. But that by itself would not amount to negligence on the part of the Auto driver.

13. It is evident from the evidence of R.W1, P.W.2 and Ex.P.3 rough sketch prepared by the Police during the investigation, the accident was admittedly occurred on the northern side of the east west Bodi to Theni Main Road. It is also not in dispute that the



Auto was proceeding from west to east and the bus came from east to west. As rightly contended by the learned counsel for the claimants, the bus which came from east to west moved towards the right side of the road and caused the accident. Though the appellant's specific stand is that the bus driver was not at fault and the Auto driver was alone responsible for the accident, they have not chosen to examine any other person, who had allegedly witnessed the occurrence nor any other evidence to show that the auto driver alone was at fault. There is no acceptable and satisfactory contra evidence.

14.As already pointed out, the appellant has also taken a stand that the deceased Auto driver was under the influence of Alcohol at the time of accident and that the same also contributed to the accident. The appellant, in order to prove the said contention, has summoned and examined R.W.2/Medical Officer, who had conducted postmortem on the body of the deceased Rajaprabu. R.W.2 in his chief examination would say that he found some Alcohol smell while examining the deceased, but in cross examination, he would admit that he had not taken blood sample to ascertain as to whether the injured consumed Alcohol and that he had not issued any drunken certificate for the deceased.

15.It is not the case of R.W.2 that blood sample or viscera was taken and the same was sent to chemical analysis to ascertain as to whether the deceased consumed liquor or not. As rightly contended by the learned counsel for the claimants, they have not taken any steps to ascertain as to whether Alcohol was found in the blood and its percentage. Considering the above, as rightly contended by the learned counsel for the claimants, the appellant has failed to establish that the deceased was under the influence of Alcohol at the time of accident.

16.The learned counsel for the appellant would further contend that the vehicle involved in the accident is a Light Motor Transport Vehicle, which requires a transport endorsement badge in addition to the Light Motor Vehicle License and that since the deceased Auto driver was not possessing the endorsement badge, the appellant cannot be made liable. The appellant has also summoned and examined a staff attached to the Regional Transport Office, Theni as R.W.3 and he would say that the deceased Rajaprabu was possessing Light Motor Vehicle and two wheeler license and that the person by holding the above license cannot drive passenger vehicle.

17.To counter this contention, the learned counsel for the claimants would submit that the light motor vehicle does not require endorsement badge to drive the transport vehicle, which



does not exceed 7500 kgs. 'unladen weight'. The learned counsel for the claimants has relied on the decision of this Court in **The New India Assurance Co. Ltd., Vs. A.Thangavel and another** in CMA.No.2878 of 2015, dated 29.06.2021, whereunder this Court has relied on the judgement of the Hon'ble Supreme Court in **Mukund Dewangan Vs. Oriental Insurance Company Limited** reported in **2016 4 SCC 298**, and the relevant paragraph is extracted hereunder :

"7. Admittedly, as seen from the evidence available on record, the Learner's Licence of the Driver of the vehicle has been marked as Ex.R2. It is now settled law that as per the decision of the Hon'ble Supreme Court in the case of **Mukund Dewangan versus Oriental Insurance Company Limited** reported in **2016 4 SCC 298**, the Learner's licence to drive the Light Motor Vehicle is a valid and effective licence for the purpose of claiming compensation involving a Light Motor Vehicle like that of an Autorickshaw. The Hon'ble Supreme Court has also held that for such a Light Motor Vehicle, a separate badge endorsement is not required."

18.Considering the above legal position laid down by the Hon'ble Supreme Court, the contention of the appellant that they are not liable for want of transport endorsement badge in addition to the Light Motor Vehicle has to fail.

19.Coming to the quantum of compensation, it is the specific case of the claimants that the deceased Rajaprabu was owning an Auto and that he was earning Rs.700/- per day and Rs.21,000/- per month. No doubt, as rightly observed by the Tribunal, the claimants have not produced any evidence to show that the deceased was earning Rs.21,000/- per month. But the Tribunal by relying the judgment of this Court in **Andal and others Vs. Avinav Kannan and another** reported in **2019 (1) TNMAC 54 (DB)**, has fixed the monthly income at Rs.12,000/- and as such the same cannot be found fault with.

20.The Tribunal, by relying on the Ex.P.2 postmortem certificate has fixed the age of the deceased as 21 years on the date of accident and that the same was not disputed by the appellant. The Tribunal by following the judgment of the Hon'ble Apex Court in **National Insurance Company Limited vs. Pranay Sethi and others** reported in **2017 ACJ 2700**, has rightly added 40% of the income towards future prospects and on considering the fact that the deceased was a bachelor, has rightly deducted 50% of the income towards personal and living expenses of the deceased. As per legal dictum laid down by the Hon'ble Supreme Court in **Smt.Sarla Varma and others Vs. Delhi Transport Corporation and another** reported in **AIR 2009 SC 3104**, the Tribunal has applied



multiplier 18 and arrived at Rs.18,14,400/-.

21.Our Hon'ble Supreme Court in **Pranay Sethi's** case has permitted to award Rs.40,000/- towards spousal consortium. But, subsequently, Hon'ble Supreme Court in **Magma General Insurance Company Ltd, Vs. Nanu Ram alias Chuhru Ram and others** reported in (2018) 18 SCC 130, has held that the right to consortium would include the company, care, help, comfort, love and affection, guidance, solace, etc., which is a loss to his family. Honourable Supreme Court interpreted consortium to be a compendious term, which encompasses (i) spousal consortium, to be awarded to the surviving spouse, (ii) parental consortium to be awarded to the children upon the premature death of their parents and (iii) filial consortium to be awarded to the parents for the loss of their children. Recently, Hon'ble Apex Court in **The New India Assurance Company Ltd. Vs. Smt.Somwati and others**, has reiterated the above position and further held that the amount to be awarded for loss of consortium will be as per the amount fixed in **Pranay Sethi's** case.

22.Considering the above, the claimants are entitled to get Rs.40,000/- each towards parental consortium and they are entitled to get Rs.15,000/- towards funereal expenses; and Rs.15,000/- towards loss of estate under the conventional heads and the above points are answered accordingly.

23.In the result, the Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the tribunal at Rs.19,49,000/- is reduced to Rs.19,24,400/-. Out of the said compensation amount, the first claimant/father of the deceased is entitled to get Rs.7,00,000/- and the second claimant/mother of the deceased is entitled to get the remaining amount. The Appellant/Transport Corporation is directed to deposit the modified amount with interest at 7.5% per annum and costs within a period of four weeks from the date of receipt of copy of this order, if not already deposited. The claimants are permitted to withdraw the said amount by filing necessary application before the Tribunal. Parties are directed to bear their own costs.

Sd/-

Assistant Registrar (CS I)

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Sub Assistant Registrar (CS)

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To

1.The Motor Accident Claims Tribunal
Additional District Judge (FTC), Theni.

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

C.M.A(MD)No.105 of 2020
25.10.2021

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