



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 20.09.2021

Delivered on : 29.10.2021

CORAM:

THE HONOURABLE **MRS.JUSTICE R.THARANI**

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C.M.A(MD) No.861 of 2014

1.B.Eswari

2.Minor. B.Visali

3.Minor.B.Vigneshkumar

... Appellants / Petitioners

minors 2 and 3 are rep by their mother and natural guardian namely the 1st petitioner herein

Vs.

1.The Managing Director,

Tamil Nadu State Transport Corporation Limited,

Madurai Division,

4, Bye pass road,

dindigul.

2. The Branch Manager,

The Oriental Insurance Company,

Branch Office at 555/1,

Government Hospital Road,

Theni.

...Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act,1988, against the judgment and decree dated 17.12.2008, in M.C.O.P.No.424 of 2005 on the file of the Motor Accidents Claims Tribunal, Dindigul District (Principal District Court, Dindigul).

For Appellants : Mr.K.Hema Karthikeyan

For R1 : Mr.P.Prabaharan

For R2 : Mr.C.Jawahar Ravindran

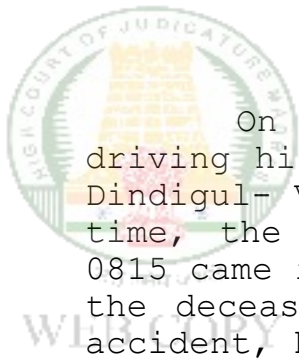
JUDGMENT

This Civil Miscellaneous Appeal is filed against the order, dated 17.12.2008, in M.C.O.P.No.424 of 2005 on the file of the Motor Accidents Claims Tribunal, Dindigul District - Principal District Court, Dindigul.

2.The appellants herein are the claimants and the respondents herein are the respondents in the original claim petition.

3.Brief substance of the petition in M.C.O.P.No.424 of 2005 is as follows:-

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



On 27.10.2004, at about 04.30 pm., the deceased / Balu was driving his own Taxi bearing Registration No.TN-38-C-3474 along the Dindigul- Vathalagundu Road, near Veerasikkanampatti Pirivu, at that time, the first respondent's Bus bearing Registration No.TN-57-N-0815 came in a rash and negligent manner, dashed against the Car and the deceased died on the spot. Since the car driver died in the accident, he was not able to lodge a complaint, whereas, a complaint was lodged against the deceased, though the accident was only due to the rash and negligence of the bus driver. The deceased was aged about 50 years and was earning Rs.6,000/- per month. The petitioners are the dependents of the deceased and they claimed a sum of Rs.5,00,000/- as compensation.

4.Brief substance of the counter filed by the first respondent in M.C.O.P.No.424 of 2005 is as follows:-

The manner of accident as narrated in the petition is wrong. The bus driver drove the vehicle in a careful and cautious manner. It was the car driver, who was rash and negligent and dashed against the bus. Nobody in the bus was sustained injury, only the bus was damaged. The accident took place due to the rash and negligent driving of the car driver and the second respondent is liable to pay compensation and not the first respondent. F.I.R was registered only against the car driver. The age, income and profession of the deceased are to be proved.

5.Brief substance of the counter filed by the second respondent in M.C.O.P.No.424 of 2005 is as follows:-

The owner of the car died in the accident. Hence, the second respondent is not liable to pay compensation. The deceased was not an employee in the vehicle. The second respondent is only a formal party and prayed the petition to be dismissed.

6.On the side of the petitioners, one witness was examined and four documents were marked. On the side of the respondents, no witness was examined and no document was marked.

7.The Tribunal, after considering both sides, has rejected the petition. Against the same, the claimants/ appellants have approached this Court by way of this Civil Miscellaneous Appeal.

8.On the side of the appellant, it is stated that the accident took place only due to the rash and negligent driving of the bus driver. There was no negligence on the part of the deceased. The deceased was the only bread winner of the family.

9.On the side of the first respondent, it is stated that the deceased was the owner-cum-driver of the Car. F.I.R was registered only against the deceased. No eye witness was examined on the side of the claimants. P.W.1 was not an eye witness. The complaint was not given by the bus driver. The complaint was given only by a



passenger, who is not an interested witness. Under Section 166-A of the Motor Vehicles Act, the claimants have to prove the negligence of the bus driver. Rough sketch, observation mahazer were not filed and that the Tribunal has rightly rejected the petition.

10. On the side of the second respondent, it is stated that the Insurance Company is impleaded only as a formal party. The deceased is not a third party. The petition under Section 166-A of the Motor Vehicles Act, is not applicable to the case. The deceased, who was the owner of the vehicle, is not entitled for compensation. There is no evidence as to the negligence of the bus driver and prayed the appeal to be dismissed.

11. It is seen that the first claimant, who is the wife of the deceased, was examined as P.W.1 and she is not an eye witness. No document was filed to prove the negligence on the part of bus driver. F.I.R is against the deceased himself. Observation mahazer, Rough sketch were not filed. There is no rebuttal evidence on the side of the respondents. In the above circumstances, to give an opportunity for the appellants to put forth their case, this Civil Miscellaneous Appeal is allowed and the order, dated 17.12.2008, in M.C.O.P.No.424 of 2005 on the file of the Motor Accidents Claims Tribunal, Dindigul District (Principal District Court, Dindigul), is hereby set aside and this case is remitted back to the Tribunal for fresh consideration. Both the parties are at liberty to adduce further evidence and to mark additional documents. No costs.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Ls

To

1. The Motor Accidents Claims Tribunal,
Dindigul District
-Principal District Court,
Dindigul.

2. The Section Officer, (2C)
VR Section,
Madurai Bench of Madras High Court,
Madurai.



C.M.A(MD)No.861/2014

+1 CC to M/s.P.PRABHAKARAN, Advocate (SR-33147[F] dated 29/10/2021)

+1 CC to M/s.K.HEMAKARTHIKEYAN, Advocate (SR-33291[F] dated 29/10/2021)

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KB(22.11.2021) 4P 6C