



C.M.A.No.362 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 02.03.2022

Pronounced on : 30.06.2022

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A.No.362 of 2012

1.A.Periasamy

2.P.Vani Bharathi

3.P.Anand

..Appellants/Petitioners

Vs.

1.P.Rajendran

S/o.Periyasamy

Driver,

Tamil Nadu State Transports

Corporation Ltd.,

Chennimalai Road, Erode.

2.The Managing Director,

Tamil Nadu State Transports

Corporation Ltd.,

Chennimalai Road, Erode

..Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and award of the learned Principal District Judge, Erode in M.C.O.P.No.830 of 2001 dated 08.09.2003.



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For Appellants : Mr.J.Prithvi
for M/s.S.Kaithamalai Kumaran

For R2 : M/s.Sundaravathanam

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellants/claimants praying for enhancement of compensation as the tribunal awarded only Rs.50,000/- under no fault liability.

2.The appellants/claimants filed a claim petition in M.C.O.P.No.830 of 2001 claiming a sum of Rs.8,00,000/- as compensation for the death of one Soundaram, mother of the appellants No.2 and 3 and wife of the 1st appellant, who died in the accident that took place on 22.12.1998.

3. The case of the claimants is that on 22.12.1998 at about 11.00 a.m., when the deceased Soundaram was walking from West to East direction at Erode Town Bus stand, a bus bearing registration No.TN 33 N 0948 driven by the first respondent in a rash and negligent manner, dashed against the deceased. Due to



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the said impact, the deceased Soundaram sustained multiple injuries all over the body. Immediately, she was taken to the Government Hospital, Erode, but the said Soundaram died en route to the hospital. Hence, the claim petition filed by the legal heirs of the deceased.

4. The Tribunal, considering the pleadings, oral and documentary evidence, held that P.W.1 has not spoken anything about the rash and negligent driving of the first respondent. Further he is not an eye witness. P.W.2 spoke about the job work done by the deceased Soundram. But he has not spoken anything about the rash and negligent driving of first respondent. As such, the tribunal held that the petitioners totally failed to prove that the accident has happened only due to the rash and negligent driving of the bus by the first respondent. As such the tribunal held that the petitioners are entitled only to the no-fault liability amount of Rs.50,000/- for the death of deceased Soundaram and directed the 2nd respondent/Transport Corporation to pay a sum of Rs.50,000/- as compensation to the appellants/claimants.

5. Challenging the amount granted by the award dated 08.09.2003 made in



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M.C.O.P.No.830 of 2001, the appellants/claimants have come out with the present appeal.

6. The learned counsel appearing for the appellants contended that the Tribunal failed to see that the deceased was walking from West to East inside the bus stand and R.W.1 driver of the bus had clearly stated that the bus entered the bus stand from West to East and therefore, the possibility of the deceased crossing the road does not arise at all. Moreover, the deceased was hit by the left side body of the bus. The learned judge has erred in coming to the conclusion that the driver of the bus was not responsible for the accident without considering the report (Ex.A4) of the Motor Vehicles Inspector. In any event, the amount awarded by the Tribunal is meager and prayed for enhancement of the compensation.

7. Per contra, the learned counsel appearing for the 2nd respondent-Transport Corporation submitted that the first respondent was driving the bus in a normal speed. At that time, the deceased Soundaram tried to board a bus towards East direction and suddenly crossed the road without seeing the oncoming vehicle and dashed against the bus and she sustained injuries because of her negligence only.



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There is no fault on the part of the first respondent and therefore, the 2nd respondent/Transport Corporation is not liable to pay compensation to the appellants. The Tribunal's finding is perfectly in order and it needs no interference.

8. Before the Tribunal, husband of the deceased examined himself as P.W.1 and one Mr.Subramanian, employer of the Subbu Mills was examined as P.W.2 with regard to the earning capacity of the deceased and nine(9) documents were marked as Exs.A1 to A9. The Driver of the bus was examined as R.W.1 and no documents were marked on the side of the respondents.

9. Heard the learned counsel appearing for the appellants/claimants and the learned counsel appearing for the second respondent/Insurance Company and perused all the materials available on record.

10. A perusal of the judgment of the Tribunal would go to show that the Tribunal, on mere conjectures and surmises, has granted compensation under no fault liability. On the other hand, no eye witness was examined. The Tribunal in any event, has to fix the negligence on the part of the 1st respondent because the



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accident occurred inside the bus stand and the bus dashed against the right side of the deceased. Even though it is found by the tribunal that in the criminal case, the first respondent was acquitted of the offence with regard to the accident, in the considered opinion of this court, where there is a duty to exercise care, reasonable care must be taken to avoid acts or omissions which can be reasonably foreseen to be likely to cause physical injury to persons. The duty of care is owed only to those persons who are in the area of foreseeable danger; the fact that the act of the first respondent is that he violated his duty of care to a third person i.e. deceased. Since the said act or omission may accordingly in some circumstances involve liability, the first respondent is considered as being negligent.

11. In this case, the Tribunal has given compensation only as no fault liability holding that the first respondent was acquitted from the criminal case. When the issue as to whether the judgment of the Criminal Courts are binding on the Civil Court/Motor Accident Claims Tribunal, arises for consideration, a Division Bench of this Court in an unreported decision in C.M.A.No.1369 of 2017 (TNSTC Vs. P.Shanthi and others) dated 28.04.2017, after referring to various decisions, has held as follows:



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“Mere acquittal in a criminal case does not lead to an automatic inference that there was no negligence on the part of RW1, driver of the bus. The standard of proof required is entirely different from the Criminal Court. In Motor Accident Claims Cases, preponderance of probability is the test to arrive at the conclusion regarding negligence.”

(b) In Vinobabai and others versus K.S.R.T.C. and another, reported in 1979 ACJ 282, the High Court of Karnataka held as follows:

“8.Thus, the law is settled that when the driver is convicted in a regular trial before the Criminal Court, the fact that he is convicted becomes admissible in evidence in a civil proceeding and it becomes prima facie evidence that the driver was culpably negligent in causing the accident. The converse is not true ; because the driver is acquitted in a criminal case arising out of the accident, it is not established even prima facie that the driver is not negligent, as a higher degree of culpability is required to bring home an offence.”

(c) [In Oriental Insurance Co. Ltd., v. K.Balasubramanian](#) reported in 2007

(2) TN MAC 399, it is held as follows:

“It is a well settled proposition of law that the judgments of the Criminal Courts are neither binding on the Civil Court/Motor



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Accident Claims Tribunal no relevant in a Civil Case or a claim for compensation under the [Motor Vehicles Act](#), except for the limited purpose of showing that there was a criminal prosecution which ended in conviction or acquittal. But there is an exception to the general rule. When an accused pleads guilty and is convicted based on his admission, the judgment of the Criminal Court becomes admissible and relevant in Civil proceedings and proceedings before the Motor Accident Claims Tribunal, not because it is a judgment of the Criminal Court, but as a document containing an admission. Of course, admissions are not conclusive proof of the facts admitted therein. But unless and until they are proved to be incorrect or false by the person against whom the admissions are sought to be used as evidence, the same shall be the best piece of evidence."

(d) In ***Himachal Road Transport Corporation and another versus Jarnail Singh and others, reported in 2009 ACJ 2807***, it has been held that acquittal of the driver in the criminal trial will have no bearing on the findings to be recorded by the Motor Accident Claims Tribunal, as to whether the driver was negligent or not in causing the accident. At Paragraph 15, it is held as follows:

"15. In view of the definitive law laid down by their Lordships of the Hon'ble Supreme Court and the judgments



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cited hereinabove, it is now well settled law that the acquittal of the driver in the criminal trial will have no bearing on the findings to be recorded by the Motor Accident Claims Tribunal whether the driver was negligence or not in causing the accident.”

12. The Motor Vehicles Act Act being a beneficial piece of legislation, if two interpretations were possible, it was opined that the one, which is in favour of the claimants should be given. Therefore, following the above Rulings, this Court holds that the first respondent is responsible for the accident and the second respondent/Transport Corporation is liable to pay compensation to the claimants.

13. From the materials available on record, it is seen that the accident is of the year 1988. According to the claimants, the deceased was aged 42 years and was earning a sum of Rs.5,000/- to Rs.6000/- by doing job work of stitching. Salary Certificate issued by P.W.2 was marked as Ex.A9.

14. In view of the same, the award of the Tribunal granting a sum of Rs.50,000/- as compensation under no fault liability to the appellants is set aside and the appellants are entitled to compensation as per Schedule II of Section 163 of



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the Motor Vehicles Act, 1988. Considering the age, year of the accident and avocation of the deceased, this Court is of the view that salary of the deceased at Rs.4,000/- p.m. can be reasonably fixed as notional income of the deceased. As per the decision reported in **2009(2) TN MAC 1 (SC) (Sarla Verma and others vs. Delhi Transport Corporation and another)**, multiplier 14 has to be adopted, according to the age of the deceased. As the deceased was a mother of two children, $\frac{1}{3}^{\text{rd}}$ of the income has to be deducted towards personal expenses and accordingly, if $\frac{1}{3}^{\text{rd}}$ of the amount is deducted towards personal expenses, the compensation towards loss of dependency comes to Rs..4,48,000/- [Rs.4,000/- X 12 X 14 X $\frac{2}{3}$]. Further, towards Transportation, Rs.10,000/-, towards Funeral Expenses Rs.5000/- and towards Loss of Love and Affection, Rs.30,000/- is awarded. Accordingly, the modified compensation granted by this court is Rs.4,93,000/-.

15. In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.50,000/- is hereby enhanced to Rs.4,93,000/- [Rupees Four lakhs ninety three thousand only] together with interest at the rate of 7.5% per annum from the date of petition till the date of



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deposit. The second respondent-Transport Corporation is directed to deposit the enhanced award amount now determined by this Court, along with interest and costs, less the amount already deposited, if any, within a period of twelve weeks from the date of receipt of a copy of this judgment. On such deposit, the appellants are permitted to withdraw their respective shares in equal proportion. No costs.

30.06.2022

Index : Yes / No
Speaking Order : Yes/No
msv/nvsri

To

1.The Principal District Judge, Erode.

2.The Record Keeper,
V.R.Section, High Court,
Chennai.

3. The Managing Director,
Tamil Nadu State Transports
Corporation Ltd.,
Chennimalai Road, Erode



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J.NISHA BANU,J.

Msv/nvsri

**Judgment in C.M.A.No.362
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