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C.M.A(MD)No.1313 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 03.11.2022

Pronounced on : 23.11.2022

CORAM

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

C.M.A(MD)No.1313 of 2013

The Managing Director,
M/s.Tamilnadu State Transport Corporation,
(Kumbakonam Division-II) Ltd.,
Periyamilaguparai,
Trichy District.

...Appellant/ Respondent

Vs

C.Mahendiran

... Respondent / Petitioner

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988, against the judgment and decree passed in M.C.O.P.No.12 of 2009, dated 12.01.2011, on the file of the Motor Accidents Claims Tribunal cum Sub-Court, Kulithalai.

For Appellant : Mr.M.Prakash

For Respondent : Mr.N.Sudhakar Nagaraj



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JUDGMENT

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This Civil Miscellaneous Appeal is filed against the order in MCOP No.12 of 2009 on the file of the Motor Accidents Claims Tribunal cum Sub-Court, Kulithalai. The appellant herein is the respondent, respondent is the claimant in the claim petition.

2.Brief substance of the claim petition is as follows:

On 16.02.2008 at about 11 pm, when the deceased Gangaiammal was travelling in the respondent's bus, a bus stopped at Sitharkadu Anna Kalyana Mandapam bus stop and when the deceased was trying to get down from the bus, the driver of the bus moved the bus rashly and negligently. The deceased fell down from the bus and she sustained injuries. She was taken to Mayiladuthurai Government Hospital. In spite of treatment, she died on 17.02.2008. She was aged about 65 years at the time of accident and was earning Rs.6000/- per month by doing dry fish business. The petitioner is the dependant of the deceased. He claimed a sum of Rs.10,00,000/- as compensation.



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3. Brief substance of the counter filed by the respondent, in the claim petition, is as follows:

The respondent's driver drove the vehicle in a careful and cautious manner. No accident has taken place. If at all there was any accident the bus would have been stopped at the place of accident and all the passengers would have been get out from the bus. But there was no such accident. Only on the next day, only when the police enquired the driver of the bus, he came to know that there was an allegation of an accident. There was no possibility of any accident to have taken place on that date. After investigation, the police closed the case as mistake of fact. The allegations regarding the age, occupation and monthly income are all denied. The claim is excessive.

4. Two witnesses were examined and two documents were marked on the side of the petitioner. One witness was examined and one document was marked on the side of the respondent. The Tribunal awarded a sum of Rs.3,59,000/- as compensation.

5. Against the same, the appellant preferred this appeal on the following grounds:



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The Tribunal failed to note that no accident has happened and that the criminal case registered against the driver was closed as mistake of fact. The Tribunal is wrong in fixing the negligence on the driver of the appellant. Mere registration of a criminal case against the bus driver is not a conclusive proof. The Tribunal is wrong in fixing the monthly income of the deceased. The award is excessive.

6.On the side of the appellant, it is stated that the deceased get down from the running bus and he sustained injuries. The quantum fixed by the Tribunal is excessive. There was no proof of income.

7.On the side of the respondent it is stated that the respondent has already withdrawn the entire amount deposited by the appellant and pray the award to be confirmed.

8.P.W.2 has deposed that she accompanied the deceased and the deceased and both P.W.2 have boarded the bus to go to Mayavaram and when the deceased Gangaammal tried to get down from the bus through the rear entrance, the driver of the bus moved the vehicle and hence the deceased fell



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down. R.W.1 has deposed that no such incident has taken place and the First Information Report was closed as mistake of fact. In Ex.P1, it is stated that the deceased fell down from the bus and she sustained injuries. It is proved that there was an accident. The total denial of the accident on the part of the appellant, is wrong. Hence, it is decided that the accident has happened due to the rash and negligent driving of the bus driver.

9. It is stated that the deceased was earning Rs.6,000/- per month. The Tribunal has fixed the monthly income as Rs.4,000/- per month which is reasonable. The Tribunal has awarded Rs.10,000/- towards funeral expenses, Rs.3,000/- towards transport expenses, Rs.5,000/- towards loss of love and affection which all are reasonable. The Tribunal calculated the loss of income as Rs.3,59,000/-, which is reasonable.

10.For the above said reasons, it is decided that there is nothing sufficient enough to interfere in the orders of the Tribunal. Hence this Civil Miscellaneous Appeal is dismissed.



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11. Accordingly, this Civil Miscellaneous Appeal is dismissed. No costs.

(i) The quantum of compensation awarded by the Tribunal is confirmed as Rs.3,59,000/- (Rupees Three Lakhs Fifty Nine Thousand only) which shall carry interest at the rate of 7.5% per annum.

(ii) The appellant / Transport Corporation is directed to deposit the entire compensation of Rs.3,59,000/- (if not already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and proportionate costs to the credit of MCOP No.12 of 2009 on the file of the Motor Accidents Claims Tribunal, Kulithalai, within a period of eight weeks from the date of receipt of a copy of this order.

(iii) On such deposit being made by the appellant / Transport Corporation, the respondent herein/ claimant is permitted to withdraw the entire award amount of 3,59,000/- (Rupees Three Lakhs Fifty Nine Thousand only) with proportionate interest and cost.

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Index: Yes / No
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To

- 1.The Motor Accidents Claims Tribunal cum Sub-Court, Kulithalai.
- 2.The Record Keeper, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.



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