



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON :29.03.2022

PRONOUNCED ON :06.04.2022

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CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A(MD)No.1 of 2019

and

C.M.P(MD)No.29 of 2019

The Tamil Nadu State Transport Corporation Limited,
through its General Manager,
Office at Ranithottam,
Nagercoil. :Appellant/Respondent

.vs.

1.Chellammal

2.Ramalakshmi

3.Seethalakshmi

4.Arul Selvam :Respondents/Petitioners

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree made in M.C.O.P.No.1163 of 2017, dated 28.02.2018, on the file of the Motor Accidents Claims Tribunal/Ist Additional District and Sessions Court, Tirunelveli.

For Appellant : Mr.P.Prabhakaran

For Respondents : No appearance
1 to 4

JUDGMENT

This Civil Miscellaneous Appeal is directed against the award and decree made in M.C.O.P.No.1163 of 2017, dated 28.02.2018, on the file of the Motor Accidents Claims Tribunal/Ist Additional District and Sessions Court, Tirunelveli.

2.The Transport Corporation is the appellant herein challenging the award passed in M.C.O.P.No.1163 of 2017, on the ground of liability and quantum. The respondents herein are the legal representatives of the deceased Vanumamalai.



3.The claim petition was resisted by the Transport Corporation on the ground that the First Information Report was registered against the dead person and hence, the driver of the transport Corporation bus is not responsible for the accident.

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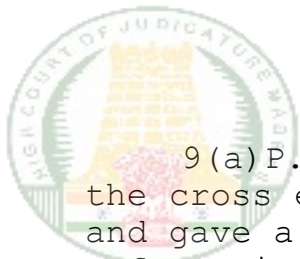
4.The learned Tribunal, on consideration of both oral and documentary evidence, has disbelieved the evidence of P.W.1 and believing the evidence of P.W.2, consequently, held that the accident has taken place due to the negligent driving of the driver of the transport Corporation bus. Accordingly, the Tribunal fixed the liability upon the appellant/Insurance Company and has also awarded compensation.

5.Challenging the said finding as well as the quantum of compensation awarded by the Tribunal, this Civil Miscellaneous Appeal has been preferred.

6.The learned counsel for the Transport Corporation would contend that the deceased has invited the problem and the FIR was registered at the instance of P.W.1, who is none other than the son of the deceased, as against his own father and also contended that he is not wearing helmet.

7.On a perusal of the counter filed before the Court below as well as the cross-examination, no such plea has been raised before the Court below and hence, the same cannot be allowed to be raised before this Court, for the first time. On a perusal of the evidence of P.W.1, son of the deceased and author of the First Information Report and also the evidence of R.W.1, driver of the Transport Corporation bus, this Court finds that the answer elicited in the respective cross-examination, assumes significance. It is the specific evidence of P.W.1 that when the deceased was riding the motor-cycle, having Registration No.TN 59 BB 4438 near Nanguneri Railway Gate on the Nanguneri -Nagercoil Main Road, the Transport Corporation bus came in a high speed in a rash and negligent manner and dashed against the deceased.

8.From the records, it is seen that a case has been registered by the Nanguneri Police under Section 279 and 304-A of IPC in Crime No.198/2017, as if the deceased had driven the motor cycle in a rash and negligent manner and the son of the deceased i.e., the fourth Petitioner is working at Trivandrum and he was examined as P.W.1, would depose that the Inspector of Police, Nanguneri obtained the signatures in two white papers from the fourth Petitioner for the purpose of Autopsy, but the case has been registered against the deceased himself. The Petitioners also sent a complaint to the Superintendent of Police, Tirunelveli about the said fact.The accident had happened solely due to the rash and negligent driving of the driver of the respondent.



9(a) P.W.1, driver of the transport Corporation bus admitted in the cross examination that he also went to Nanguneri Police Station and gave a complaint to the Inspector of Police. However, the First Information Report now registered is not in accordance with his complaint. In other words, it is the specific evidence of R.W.1 that the Inspector of Police has not registered the First Information Report, as per his complaint. It remains to be stated that the Police have chosen to register the complaint given by the son of the deceased. Admittedly, he was in Trivandrum at the time of the accident. It is unknown to common prudence that even the deceased was negligent, the fourth Petitioner, P.W.1, who is being the son of the deceased, would not have come forward to lay the complaint namely, the First Information Report by fixing the negligence on his own father, especially, when he has not witnessed the accident, remains significance.

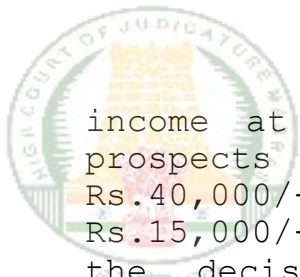
9(b) Thus from the evidence of P.W.1 and R.W.1, this Court finds that the Police said to have received the complaint from P.W.1 and registered the First Information Report-Ex.P1 against the deceased. The explanation offered by P.W.1 is that the Police have obtained signatures in two blank papers for the purpose of doing post-mortem and subsequently cooked up as a complaint and registered the First Information Report, assumes significance.

10(a) Yet another point is that admittedly, P.W.1 namely, the fourth Petitioner is not occurrence witness to the accident. On the contrary, R.W.1 is the driver of the Transport Corporation bus and the complaint given by him was not taken on file by the Police and hence, I find that the finding rendered by the Tribunal that the Police have high-handedly registered the case against a person who is deceased, as he has got information from his own son P.W.1 who had not witnessed the accident.

10(b) The evidence of P.W.2 clearly establishes the fact that the occurrence has taken place due to the rash and negligent driving of the driver of the transport Corporation bus and hence, I find that the oral testimony of R.W.1 is only a self serving statement to save his skin from the departmental proceedings and hence, the finding rendered by the Tribunal that the evidence of P.W.2 is reliable and trustworthy, does not suffer from any irregularity or illegality warranting interference by this Court.

10(c) Accordingly, such a finding of the Tribunal is hereby confirmed. Consequently, rash and negligence is on the part of the driver of the transport Corporation bus and hence the appellant/Transport Corporation is liable to pay compensation to the claimants.

11. As per the post-mortem report, the deceased is aged 49 years at the time of accident and the Tribunal has fixed the notional



income at Rs.7500/-p.m and taking 25% of the income as future prospects and arrived at the loss of income and also granted Rs.40,000/- towards loss of consortium and loss of estate at Rs.15,000/-and also Rs.15,000/- towards funeral expenses, as per the decision of **Sarla Verma Case** and **Pranay Sethi's case** respectively and hence, the quantum of compensation awarded by the Tribunal is just and proper and the same does not warrant any interference by this Court at this appellate stage. Accordingly, both the points raised by the transport Corporation is hereby rejected and hence, the award of the Tribunal has to be confirmed and as such, the appeal deserves no merit acceptance.

12.Accordingly, the Civil Miscellaneous Appeal stands dismissed and the award of the Tribunal is confirmed. No costs. Consequently, connected Miscellaneous Petition is dismissed.

Sd/-

Assistant Registrar(CS-III)

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Sub Assistant Registrar(CS)

vsn

To

1.The Motor Accidents Claims Tribunal,
Ist Additional District and Sessions Court,
Tirunelveli.

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

+1 CC to M/s.P. PRABHAKARAN, Advocate SR-17052[F] dated 07/04/2022

JUDGMENT MADE IN
C.M.A(MD)No.1 of 2019
and
C.M.P(MD)No.29 of 2019
06.04.2022

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TR(20.04.2022) 4P 5C