



C.M.A.(MD)No.291 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 21.06.2022

Delivered On : 15.07.2022

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.291 of 2018

Tamil Nadu State Express Transport Corporation Limited,

Chennai through his

Managing Director

.. Appellant /1st Respondent

Vs.

1.Esakki Devi

2.Minor.Balasuruthika

3.Minor.Sakthi Karthika

(The respondents 2 and 3 are minors

represented through their mother

1st respondent)

4.Jeyalakshmi

.. Respondents 1 to 4/ Petitioners

5.S.Karuppasamy

6.Reliance General Insurance Company Limited,

Branch office, Door No.10/4/4, Thaha plaza,

2nd Floor, South Bye pass Road, Vannarpettai,

Tirunelveli -3 through its Branch Manager

.. Respondent 5 &6 / Respondent 2 & 3



C.M.A.(MD)No.291 of 2018

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree made in M.C.O.P.No.167 of 2016, dated 22.12.2017, on the file of the Motor Accident Claims Tribunal / Special Sub Court, Tirunelveli.

For Appellant : Mr.P.Prabhakaran
For Respondent Nos. 1 to 4 : Mr.V.Sasikumar
For Respondent No.5 : No appearance
For Respondent No.6 : Mr.V.Sakthivel

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award made in M.C.O.P.No.167 of 2016, dated 22.12.2017, on the file of the Motor Accident Claims Tribunal / Special Sub Court, Tirunelveli. The appellant herein is the first respondent and the respondents 1 to 4 herein are the claimants and the respondents 5 and 6 herein are the respondents 2 and 3 in the original M.C.O.P. Petition.

2. Brief substance of the claim petition in M.C.O.P.No.167 of 2016, is as follows:

The deceased was working as a driver in the second respondent -lorry bearing Registration No.TN-69-F-0365. He was earning a sum of Rs.25,000/- per



C.M.A.(MD)No.291 of 2018

month. On 21.11.2015, at about 4.00 am., when the lorry was near Kasavanur Vilakku, along the Madurai to Trichy main road, the tyre of the lorry got punctured.

The deceased got down from the lorry and he was making arrangement for changing the lorry tyre. At that time, a bus bearing Registration No.TN-01-N-5081 was driven by its driver in a rash and negligent manner dashed against the stationed lorry. The deceased and the driver of the bus and some passengers sustained severe injuries. The deceased – Sivakumar was taken to Trichy Government Hospital and he died at about 11.45 am. The claimants are the dependents of the deceased-Sivakumar and they claimed a sum of Rs.50,00,000/- as compensation.

3. Brief substance of the counter filed by the first respondent in M.C.O.P.No.167 of 2016, is as follows:

The driver of the first respondent drove the vehicle in a careful and cautious manner along the left side of the side. It was the deceased, who suddenly stopped the vehicle in the middle of the road, without giving any signal. The first respondent driver tried to stop the bus, even though he applied the sudden brake, the bus was dragged and dashed against the lorry. The age, income and avocation of the deceased are denied. Legal Heirs Certificate was not filed on the side of the claimants. The petition is to be dismissed.



C.M.A.(MD)No.291 of 2018

WEB COPY

4. Brief substance of the counter filed by the third respondent in M.C.O.P.No.167 of 2016, is as follows:

The facts of the petition are all denied. The accident took place only due to the rash and negligent driving of the bus driver. A criminal case was registered as against the bus driver. The respondents 2 and 3 are only formal parties. It is the duty of the petitioners/ claimants to prove that the lorry driver was having valid licence and that the lorry was properly insured.

5. On the side of the claimants, 2 witnesses were examined and 7 documents were marked. On the side of the respondents, 1 witness was examined and no document was marked. After considering both sides, the Tribunal awarded a sum of Rs.21,17,500/- to be paid by the Transport Corporation.

6. Against the order, the appellant / Transport Corporation has filed this appeal on the following grounds:-

The Tribunal has erred in holding that the driver of the appellant was solely responsible for the accident. The Tribunal ought to have fixed the negligence on the lorry driver. The total compensation award fixed by the Tribunal is too excessive and exorbitant. The Tribunal fixed the monthly income at Rs.13,000/-,



C.M.A.(MD)No.291 of 2018

which is very excessive. In addition to that the Tribunal has added 25% towards future prospects.

7. On the side of the appellant, it is stated that there is no possibility of the deceased to have taken steps to change the tyre of the lorry. The claimants failed to produce the rough sketch, observation mahazer, to prove the manner of the accident. At least contributory negligence is to be fixed on the deceased.

8. On the side of the respondents 1 to 4 / claimants, it is stated that it is wrong to state that the lorry was stopped on the middle of the road. In the counter of the Transport Corporation it was stated that even after applying the brake, the bus moved further and hit against the lorry. Even some of the passengers, who travelled in the bus sustained injuries and hence, the burden is on the appellant / Transport Corporation to produce the observation mahazer and the MVI report.

9. On the side of the sixth respondent / Insurance Company, it is stated that some of the passengers in the bus got injuries and that it is the duty of the appellant / Transport Corporation to produce the observation mahazer.



C.M.A.(MD)No.291 of 2018

10. A perusal of the records reveals that the F.I.R was registered against the bus driver, which was marked as Ex.P1. The lorry was stationed at the time of accident. The appellant failed to produce the observation mahazer or the rough sketch to prove that the lorry was parked on the middle of the road, at the time of accident. In the counter, it was admitted that the bus dragged to one side and hit against the driver of the lorry, which reveals that the bus driver was rash and negligent at the time of accident. Hence, it is decided that the driver of the bus was responsible for the accident.

11. On the side of the appellant, it is stated that quantum fixed by the Tribunal is excessive and that the tribunal has fixed the monthly income at Rs.13,000/- and added 25% future prospects, which is excessive and that as per the decision made in *Syed Sadiq case*, notional income Rs.6,000/- alone has to be taken into consideration. The avocation of the deceased was not proved. P.W.2 was mentioned as a driver and hence whether the deceased was a driver or a cleaner was not proved by the claimant

12. On the side of the respondents 1 to 4/claimants, it is stated that the deceased was having Heavy vehicle driving licence and the same was marked as Ex.P7.



C.M.A.(MD)No.291 of 2018

WEB COPY 13. A perusal of the records reveals that the deceased was having Heavy Vehicle driving licence and hence, the income of the deceased as fixed by the Tribunal is reasonable. The deceased was aged about 45 years at the time of accident and the multiplier applied by the Tribunal is '14', which is reasonable. The Tribunal deducted 1/4th of the income towards the personal expenses of the deceased, which is also reasonable. The quantum of compensation fixed by the Tribunal under various heads is reasonable.

14. In the above circumstances, there is nothing sufficient enough to interfere in the orders of the Tribunal and hence, this Appeal is dismissed and the award dated 22.12.2017, in M.C.O.P.No.167 of 2016, on the file of the Motor Accident Claims Tribunal / Special Sub Court, Tirunelveli, is hereby confirmed.

15. The appellant herein / Transport Corporation is directed to deposit the compensation of Rs.21,17,500/- with accrued interest at the rate of 7.5% from the date of petition till the date of deposit and costs within a period of eight weeks from the date of receipt of a copy of this order, if not already deposited. On such deposit being made, the Tribunal may permit the major claimants to withdraw their shares as apportioned by the Tribunal with interest and costs, on filing of proper petition



C.M.A.(MD)No.291 of 2018

before the Tribunal, less any amount, if already withdrawn by them. The Tribunal is directed to deposit the share of the minor claimants / respondents 2 and 3 herein in any one of the Nationalised Banks, in a Fixed Deposit scheme, till they attain majority. The first respondent, who is the mother and guardian of the minor claimants, is permitted to withdraw the accrued interest once in three months directly from the bank, only for the welfare of minors. The claimants are not entitled for interest for the default period, if there is any. No Costs.

15.07.2022

Index : Yes/No

Internet : Yes/No

Ls

Note : In view of the present lock down owing to COVID – 19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.



C.M.A.(MD)No.291 of 2018

WEB COPY

1.The Motor Accident Claims Tribunal -

Special Sub Court,
Tirunelveli

2.The Section Officer,

V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.M.A.(MD)No.291 of 2018

R. THARANI, J.

Ls

Pre-delivery Judgment made in
C.M.A.(MD)No.291 of 2018

15.07.2022