



C.M.A(MD)No.1160 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 21.11.2022

Pronounced on : 16.12.2022

CORAM

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

C.M.A(MD)No.1160 of 2017

The Managing Director,
Tamil Nadu State Transport Corporation,
Kumbakonam.

...Appellant/Respondent

Vs

1.S.Arul Karthick

... 1st Respondent/1st Petitioner

2.S.Soundarapiriya

... 2nd Respondent/2nd Petitioner

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the award dated 10.01.2012 made in M.C.O.P.No.24 of 2011 on the file of the Motor Accidents Claims Tribunal, Additional District Court, FTC, Ramanathapuram.

For Appellant : Mr.D.Sivaraman

For Respondents : No appearance



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JUDGMENT

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This Civil Miscellaneous Appeal is filed against the order in M.C.O.P.No.24 of 2011 on the file of the Motor Accidents Claims Tribunal, Additional District Court, FTC, Ramanathapuram. The appellant is the respondent. Respondents are the claimants in the original claim petition.

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

On 25.11.2005, when the deceased Subramanian and his wife Yogalakshmi were travelling in a bus bearing registration number TN 63 N 0772 from Pudukkottai to Ramanathapuram and when the bus was crossing Kottaikarai river bridge, there was heavy water flow in the river and when the bus driver was trying to cross the bridge, the bus fell into the river. The deceased Subramanian and his wife Yogalakshmi died in the accident. The deceased was a retired Sub Collector. He was receiving Rs.4275/- as pension. The claimants are the dependants of the deceased and they claim a sum of Rs.3,00,000/- as compensation.

3.Brief substance of the counter filed by the respondent is as follows:

The manner of accident is wrongly narrated in the petition. The bus



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was driven by its driver in a slow and cautious manner. Only on seeing another vehicle crossing the bridge, the driver of the bus moved the vehicle in a slow and cautious manner. There was erosion on the road, which was not visible. Due to the erosion and also due to the fact that the passengers tried to see the water and gathered on the same side of the bus, the bus capsized into the river. The accident was not due to the negligence on the bus driver. It is only an act of God. The income of the deceased, age, profession of the deceased are to be proved. The claim is excessive.

4.The claimants' mother, Yogalakshmi also died in the same accident. Hence another claim petition in M.C.O.P.No.25 of 2011 was filed by the claimants. In both the M.C.O.P.Nos.24 and 25 of 2011, a joint trial was conducted and a common judgment was pronounced by the Tribunal.

5.In the common trial, two witnesses were examined and seven documents were marked on the side of the petitioner. One witness was examined and no document was marked on the side of the respondent. The Tribunal awarded a sum of Rs.2,98,000/- as compensation in M.C.O.P.No.24 of 2011.



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6. Against the award, the appellant preferred this appeal on the following grounds:

The Tribunal failed to consider that the accident has occurred only due to the act of God and due to the poor maintenance of the road. No negligence can be attributed against the driver who lost control due to the sudden flood in the river. The Tribunal failed to appreciate the fact that the passengers of the bus were collectively responsible since they assembled on one side of the bus to see the flood. Due to which the bus lost its balance and capsized into the river. The Tribunal is wrong in fixing the income of the deceased as Rs.7,200/- per month in the absence of any oral or documentary evidence. The award is excessive.

7. P.W.2 was examined as an eye witness. He has deposed that it was the driver who was rash and negligence and he was responsible for the accident. R.W.1 was examined on the side of the respondent. He has deposed that it was the passengers who assembled on the one side of the bus and that caused the bus capsized. A copy of the FIR was marked as Ex.P1. Both R.W. 1 and P.W.2 have deposed that there was a heavy water overflowing over the bridge when the driver tried to cross the bridge. Hence, it is decided that it is



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the negligence on the part of the driver of the bus to cross the river when the bridge is overflowing with water.

8. On the side of the appellant, it is stated that the compensation fixed by the Tribunal is excessive.

9. The death certificate of the deceased was marked as Ex.P5 and Ex.P7. The Tribunal fixed the age of the deceased as 62 years. On the basis of the pension certificate, the Tribunal fixed the monthly income as Rs. 7,200/-. After deducting 1/3 towards his own expenses, the Tribunal fixed the monthly income as Rs.4,800/-. After applying multiplier 5, the loss of income is fixed as Rs.2,88,000/-. The Tribunal awarded Rs.5,000/- towards funeral expenses and Rs.5,000/- towards loss of love and affection, which are reasonable. The total compensation fixed by the Tribunal is reasonable. Hence, it is decided that there is nothing sufficient enough to interfere with the orders of the Tribunal. Hence, this Civil Miscellaneous Appeal is dismissed. No costs.

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



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(i) The quantum of compensation awarded by the Tribunal is confirmed as Rs.2,98,000/- (Rupees Two Lakhs Ninety Eight 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.2,98,000/- (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 M.C.O.P.No.24 of 2011 on the file of the Motor Accidents Claims Tribunal, Additional District Court, FTC, Ramanathapuram, 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 first and second respondents herein/1 and 2 claimants are permitted to withdraw their share of Rs.1,49,000/- (Rupees One Lakh Forty Nine Thousand only)**each** with proportionate interest and cost.

16.12.2022

Index: Yes / No
Internet : Yes / No

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To

- 1.The Motor Accidents Claims Tribunal, Additional District Court, FTC,
Ramanathapuram.
- 2.The Record Keeper, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.



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Pre-delivery Judgment made in
C.M.A(MD)No.1160 of 2017

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