



C.M.A(MD)No.39 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 08.12.2022

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THE HONOURABLE MRS.JUSTICE N.MALA

C.M.A(MD)No.39 of 2022
and
CROS.OBJ(MD)No.33 of 2022
and
C.M.P(MD)No.6485 of 2022

C.M.A(MD)No.39 of 2022

M/s.Tamilnadu State Transport Corporation Limited,
Represented by its Managing Director,
Tirunelveli,
Office at Thiruvanthapuram Road,
Vannarapettai,
Tirunelveli-627 003.

... Appellant/ Respondent

Vs

Selvam

...Respondent/Petitioner

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act to call for the records relating to the order and decretal order dated 23.02.2021 passed in M.C.O.P.No.548 of 2017 by the Motor Accident Claims Tribunal (Spl Sub Court) Dealing with MCOP Case Tirunelveli and to set aside the same.



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C.M.A(MD)No.39 of 2022

For Appellant : Mr.R.Rajamohan
For Respondent : Mr.T.Selva Kumaran

CROS.OBJ(MD)No.33 of 2022

Selvam ... Cross Objector/ Respondent

Vs

M/s.Tamilnadu State Transport Corporation Limited,
Represented by its Managing Director,
Tirunelveli,
Office at Thiruvanthapuram Road,
Vannarapettai,
Tirunelveli-627 003.

...Respondent/Appellant

PRAYER :-

This cross objection is filed under Order 41 Rule 22 C.P.C. to enhance the award amount passed in M.C.O.P.No.548 of 2017.

For cross objector : Mr.T.Selva Kumaran
For Respondent : Mr.R.Rajamohan

COMMON JUDGMENT

The above Civil Miscellaneous Appeal is filed by the Tamil Nadu State Transport Corporation aggrieved by the judgment and decree of the Motor Accident Claim Tribunal, dated 23.02.2021.



2. The brief facts of the case are as under:

The Petitioner's son, by name, S.Vinoth Kumar, while driving the motor cycle viz., Bajaj Boxer Motor cycle bearing Registration No.KL-01-AC-8944, while going on the Nagercoil to Kanyakumari Road near Anaipalam, was hit by a bus bearing Registration No.TN-74-N-1684, which came in the opposite direction in a rash and negligent manner. Due to the motor accident the petitioner's son died. The Driver of the Transport Corporation filed FIR on 30.08.2016 and criminal case in Crime No.97 of 2016 under Section 279 and 304-A IPC was registered against the deceased. According to the claimant, the criminal case was falsely foisted by the Driver of the Transport Corporation and the accident occurred only due to the rash and negligent driving of the Driver of the Transport Corporation. The claimant therefore filed a claim application under Section 166 of the Motor Vehicle Act claiming a sum of Rs.40,00,000/- (Rupees Forty Lakhs only) as compensation for the death of his son.

3. The Appellant Corporation filed a counter denying all the contentions of the claimant. The appellant Corporation in the counter affidavit submitted that as per the criminal case in Crime No.97 of 2016, the deceased, Vinoth Kumar drove the motor cycle in a rash and negligent manner



and caused the accident. The Appellant Corporation further contended that the Transport Corporation Driver was not responsible for the accident and therefore, the Appellant Corporation was not liable for the compensation amount claimed by the claimant.

4. The Motor Accidents Claims Tribunal, on an appreciation of the facts and law involved in the case allowed the claim petition and ordered compensation of Rs.5,00,000/- (Rupees Five Lakhs only) along with 7.5% interest per annum from the date of petition i.e., 21.04.2017 till the date of realization. Aggrieved by the said judgment and decree, the appellant Corporation has filed the above appeal. The claimant filed the cross objection challenging the order of the tribunal on the ground that the finding on negligence was erroneous and that the tribunal erred in converting the application from one under Section 166 of the Motor Vehicle Act to one under Section 163-A of the Motor Vehicle Act.

5. The learned counsel for the Transport Corporation submitted that the Motor Accidents Claims Tribunal erred in converting the application under Section 166 of the Motor Vehicle Act into one under Section 163 A of the Motor Vehicle Act on its finding that the claimant failed to prove negligence



of the Driver of the Transport Corporation. He further submitted that the Tribunal had categorically found that the claimant himself was negligent and therefore, the application under Section 166 of the Motor Vehicle Act ought to have been rejected.

6. In contra, the learned counsel for the claimant submitted that the Tribunal need not have converted the application to one under Section 163-A of the Motor Vehicle Act to award the compensation as the facts on record clearly establish that the claimant was entitled to compensation even under Section 166 of the Motor Vehicle Act. The counsel further submitted that there was absolutely no justification for the finding of the Tribunal that the claimant himself was negligent and that there was no negligence on part of the Driver of the Transport Corporation.

7. I have heard both sides and also perused the materials on record.

8. At the inception, the contention of the learned counsel for the appellant is that the Tribunal had no jurisdiction to convert the application under Section 166 of the Motor Vehicle Act into one under Section 163 A of



the Motor Vehicle Act, for the reasons that the claimant had failed to establish negligence. It is to be seen from the facts on record as to whose negligence caused the accident. The Motor Accidents Claims Tribunal relied on Exhibit P.8, the topo sketch of the accident, Exhibit P.1 and FIR filed by the Driver of the Transport Corporation to hold that the Driver of the transport corporation was not negligent. The Tribunal further found that the evidence of P.W.2 and P.W.3, who happened to be the eyewitnesses was contradictory in nature and hence, unreliable. It is seen from Exhibit P.8, the rough sketch of the accident site, that the point of accident was the right side of the road. Based on topo sketch and also FIR, which was registered by the Transport Corporation Driver, the Tribunal found that the claimant failed to establish negligence and therefore, converted the application into one under Section 163 A of the Motor Vehicle Act.

9. On perusal of the sketch map, it is seen that on the side of the Transport Corporation bus, there was an obstruction on the road and the point of accident was very close to the obstruction. In the rough sketch the measurements of the road, like width and distance between the median on both sides were not referred to. The failure to refer to the measurements and the distance between the median and the point of accident in the rough sketch



is a lacuna and therefore, in my considered opinion, the same will help only to point out the location or site of accident and not the manner of accident. In this context the judgment of this Hon'ble Court in the case of **Branch Manager, ICICI Lombard General Insurance Company Ltd., Vs. A.Athinarayanan** reported in **2016 ACJ 2127 (Mds)** would be relevant. The Court in the context of the evidentiary value of sketch map in proof of negligence held as follows:

“16.In this connection, the Tribunal also relied on the sketch map. Sketch map is also topography or site plan. It will tell the location, but it will not speak as to the manner of road accident. Negligence or contributory negligence is to be decided on the basis of the manner of accident. That cannot be decided by the sketch map. It has to be decided by evidence.”

10. The FIR was lodged by the Driver of the Transport Corporation, wherein, it was recorded that the accident occurred due to the negligence of the deceased motor cyclist who had crossed the median and hit the bus head on. The failure of the Transport Corporation to examine the Driver of the bus to corroborate the statements made by him in the FIR in my view is a serious lacuna. The FIR cannot be taken as gospel truth.



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11. It is further to be noted that the Transport Corporation has not let any evidence either oral or documentary to prove the negligence of the deceased. In my opinion, in the absence of contra evidence, the Tribunal ought to have accepted the evidence of the claimant's witnesses. In this context the learned counsel relied on the Judgment in the case of ***Dhanalakshmi & others Vs. Sivanandam and another*** reported in **2019 ACJ 953 (Md)** wherein it was held as follows:

“16.... Once the claimants have adduced evidence, it is for the insurance company to have examined the maker of the first information report to disprove the case of the claimants. In the absence of any evidence being adduced on the side of the respondents, the contention of the respondents cannot be accepted.”

12. Even the contents of the FIR in my view are very concocted and it is clear that the statment is very self-serving and does not reflect the true picture. It is therefore clear that the FIR lodged by the Driver of the Transport Corporation who is not an independent person cannot be relied on and further the non-examination of the driver is also fatal to the case of the appellant. I am therefore of the considered view that the finding of the tribunal on negligence cannot be sustained and hence the claim petition under Section 166 of the Motor Vehicle Act is very much tenable.



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14. As regards the quantum of compensation I am of the view that the same is just and reasonable on the facts of the case. Therefore, the quantum of compensation awarded by the Tribunal is confirmed. The Civil Miscellaneous Appeal is therefore dismissed and the Cross Objection is allowed. The respondent herein is permitted to withdraw the entire award amount of Rs. 5,00,000/- (Rupees Five Lakhs only) along with proportionate interest as apportioned by the Tribunal. No costs. Consequently the connected miscellaneous petition is closed.

08.12.2022

Index : Yes / No

Internet : Yes / No

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To

1. Motor Accident Claims Tribunal (Spl Sub Court),
Tirunelveli.

2. The Record Keeper, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.



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N.MALA, J

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