



C.M.A(MD)No.743 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 20.10.2022

Pronounced on : 23.12.2022

CORAM

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

C.M.A(MD)No.743 of 2017

The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Division II,
Periyamilaguparai,
Trichy District.

... Appellant/Respondent

Vs

1.Rengaraj
2.Thirunavukarasu
3.Thiruvenkadam

... Respondents/Petitioners

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act to set aside the judgment and award 02.01.2017 made in M.C.O.P.No.1628 of 2013 on the file of the Motor Accidents Claims Tribunal, Special District Judge, Tiruchirappalli.

For Appellant : Mr.D.Sivaraman

For Respondents : Mr.D.Boopal



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JUDGMENT

This Civil Miscellaneous Appeal is filed against the order in M.C.O.P.No.1628 of 2013 on the file of the Motor Accidents Claims Tribunal, Special District Judge, Tiruchirappalli. The appellant is the respondent herein, respondents herein are the claimants in the claim petition.

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

On 07.05.2011, at about 8.30 am, while the deceased was travelling as a pillion rider in a two wheeler bearing registration number TN 48 S 8544 along the Trichy-Tanjavur by-pass road, keeping the extreme left side of the road, near Melacolony, a bus bearing registration number TN 45 N 1918, came in a rash and negligent manner, dashed against the two wheeler. In spite of the treatment, the deceased died on 10.05.2011. The deceased was aged about 42 years, working as a coolie and was earning Rs.8000/- per month. The petitioners herein are the claimants and they claim a sum of Rs.15,000/- as compensation.



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

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The time, date and manner of accident are all denied. It was the driver of the two wheeler who suddenly overtake another two wheeler came in a rash and negligent manner without observing the traffic, hit against the bus. The driver of the bus is not responsible for the accident. The rider of the two wheeler was not having driving licence. The age, income of the deceased are all denied. The compensation claimed is excessive.

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

The respondent bus stopped on the left side of the road at Mela thaniyam bus stop. The rider of the two wheeler was having sufficient space to move along the road. But the rider of the two wheeler laden with a LPG cylinder, followed the bus very closely without giving sufficient space in a rash and negligent manner, he lost his balance and dashed against the left rear corner of the bus. Concealing the real nature of the accident, the complainant gave a false complaint to the police person. The respondent driver sent letters to the Deputy Commissioner of police and the Deputy Superintendent of Police, District Collector, Thanjavur, stating the real facts and to request the



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case to be treated as mistake of fact. The Motor Vehicle Inspector report reveals that the damage was at the rear left corner of the bus. The head light of the moped was damaged. The case is bad for non joinder of necessary parties. The age, income of the deceased are denied. The claim is excessive.

5.Two witnesses were examined and eight documents were marked on the side of the petitioner. Three witnesses were examined and twelve documents were marked on the side of the respondent. Two documents were marked as Ex.X1 and Ex.X2. The Tribunal awarded a sum of Rs.8,92,000/- as compensation.

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

The accident has happened only due to the rash and negligent driving of the rider of the two wheeler, who suddenly tried to overtake another vehicle came along the wrong side and dashed against the rear portion of the bus. The Tribunal failed to note that the rider of the two wheeler was having a gas cylinder in the front side of the two wheeler and he was travelling with the deceased as a pillion rider. Since the rider of the two wheeler could not



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control the vehicle, he lost balance and dashed against the bus. The owner and insurer of the two wheeler are necessary parties. The entire burden of proof was on the side of the petitioners. But the tribunal is wrong in drawing adverse inference against the appellant for not disproving the allegation mentioned by the claimants. FIR alone is not sufficient to fix the negligence. The Tribunal failed to appreciate the evidence of R.W.1 and R.W.3 coupled with the photographs marked as respondent side documents, wherein it is clear that the two wheeler that hit the bus from behind. The award is excessive.

7. On the side of the appellant it is stated that the bus stopped at the bus stop and it was the rider of the two wheeler having a gas cylinder in the front portion and having the deceased as a pillion rider, could not balance the two wheeler and hit against the bus. It was the rider of the two wheeler who tried to overtake another two wheeler and hit the bus from behind. The photographs taken after the accident clearly reveals the availability of the gas cylinder.



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8. On the side of the appellant it is stated that the accident has happened only due to the rash and negligent driving of the rider of the two wheeler. P.W.1 and P.W.3 have deposed that the rider of the two wheeler was responsible for the accident. Against the registering of the First Information Report, the driver of the bus has sent a letter to the District Collector and to seven other police higher officials and the letter and the acknowledgment cards were marked as Ex.R1 to Ex.R7. The letters sent to the Chief Minister's cell was marked as Ex.R8. Postal receipts were marked as Ex.R9. The photographs of the accident spot were marked as Ex.R11. The attested copy of the Motor Vehicle report was marked as Ex.X1.

9. On the side of the appellant it is stated that R.W.3 was an eye witness and that he took the photographs in his cell phone. After three days from the date of accident, the police examined R.W.3. P.W.3 was not an eye witness. He was not examined by the police. P.W.3 has admitted that the accident has happened near the bus stop. There was no chance for the bus to be driven in a rash and negligent manner near a bus stop and that the bus driver was not responsible for the accident and that the first claimant was the rider of the two wheeler. A claim by the tortfeasor is not maintainable. A judgment of the



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Hon'ble Supreme Court reported in **2013 (1) TN MAC 481** in the case of

Reshma Kumari and others vs Madan Mohan and another, is cited,

wherein it is stated as follows:

"13. The award of compensation in a motor accident case based on the Multiplier Method is an established norm in India now. A Three-Judge Bench in U.P. State Road Transport Corporation and others vs. Trilok Chandra and others, 1996(4) SCC 362, reiterated what was stated in General Manager, Kerala State Road Transport Corporation, Trivandrum v. Susamma Thomas and others, 1994(2) SCC 176, as regards determination of compensation in accident cases on the basis of Multiplier Method. In Trilok Chandra, the Court considered Section 163-A and the Second Schedule which was not under consideration in Susamma Thomas, as Section 163-A was not on the statute when the judgment in Susamma Thomas, was delivered. It was observed that by incorporation of Sections 163-A & 163-B in the 1988 Act, the situation had undergone a change. Under the Second Schedule, the maximum multiplier could be upto 18 and not 16 as was held in Susamma Thomas. In Trilok Chandra, the maximum multiplier was fixed at 18 but the Court did find several defects in the calculation of compensation and the amount worked out in the Second Schedule. Importantly this Court stated in Trilok Chandra, that Tribunals and the Courts cannot go by the ready reckoner; the Schedule can only be used as a guide."



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10.On the side of the respondents herein, it is stated that if at all the two wheeler hit the bus from behind, the rider of the two wheeler would have sustained injury. But in this case, only the pillion rider was injured and not the rider. A judgment of this Court reported in **2021(2) TN MAC 134(DB)** in the case of **Madurai Corporation Vs S.Muthuramalingam**, is cited, wherein it is held that,

"Negligence - Proof - Standard of proof - It is enough for claimants to merely establish fact of accident - Strict rules of evidence cannot be applied - However, Corporation/ Transport corporation / Insurer required to establish their case by letting in positive evidence-".

11.On the side of the appellant it is further stated that the burden of proof is on the claimants to prove the manner of accident. But the Tribunal has taken an adverse inference against the appellant which is not correct and that the FIR is not sufficient to prove the rash and negligent driving of the bus driver. A judgment of this Court reported in **2011 (2) TN MAC 78 (DB)** in the case of **New India Assurance Co. Ltd., Vs K.Rameshkumar and others**, is cited.



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12.On the side of the respondent it is stated that it was the bus which dashed behind the moped and that the criminal case was closed as mistake of fact. In the first counter, the appellant has not taken any stand regarding the two wheeler hitting the bus from behind and that the first case of the appellant was that the left front portion was hit by the moped. The first counter was not cancelled or amended and hence the second counter is not maintainable and that P.W.1 and P.W.2 were not cross examined regarding the averments put forth in the second counter.

13.On the side of the respondent it is stated that in the photographs, the gas cylinder was placed in a standing posture, two to three feet away from the bus. If the moped was laden with a gas cylinder there was no possibility for the two wheeler to be driven in a rash and negligent manner in a high speed. In the photograph the two wheeler was toppled on the right side. But the cylinder was not on the right side of the two wheeler. It was placed on the left side of the two wheeler that too in a standing position.

14.A judgment of this Court reported in **2006 (3) CTC 43** in the case of **P.Rama Srinivasa Rao vs Dr.N.Ragavan** is cited, wherein it is held as follows:



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"Marking of photographs - When and how permissible - It is not proper to mark photograph/s in cross examination even though the witness admits it - When the witness had not taken photographs, it is to be marked only through the person who took photograph or through person at whose instance it was taken."

15. On the side of the respondent it is stated that a photograph can be marked through a person who took the photographs or on whose instigation the photographs are taken. The marking of the photographs through R.W.3 is not maintainable.

16. P.W.1 and P.W.2 have deposed that the accident has happened due to the rash and negligent driving of the bus driver. Copy of the FIR was marked as Ex.P1. Copy of the alteration report was marked as Ex.P3. It is seen that the photographs were taken by R.W.3. R.W.3 has deposed that he has taken the photographs through his cell phone. Hence, it is stated that the photographs were taken by the driver and not by R.W.3 is not correct. Ex.R10 is the ticket taken by R.W.3. The photographs Ex.R11 reveals that the two wheeler hit the rear portion of the bus. The contention of the



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respondent is that after dashing against the two wheeler, the bus was taken to the front side of the two wheeler and the bus was dragged on the left side of the road. But a perusal of Ex.R11 clearly reveals that the bus was not dragged along the extreme left side of the road. The two wheeler was kept close to the bus and there is no possibility of the bus to have overtake the two wheeler after the accident. Both the rider of the two wheeler and the deceased were present in the photograph.

17.Though the appellant filed an additional counter regarding the availability of gas cylinder, the claimants have not chosen to file a rejoinder to the claim petition, denying the averments mentioned in the additional counter.

18.It is the duty of the claimant to prove the manner of accident. The first claimant was the rider of the two wheeler. From the photographs Ex.R11, From the Motor Vehicles report, Ex.X1, it is clear that the bus was hit from behind. The rider of the two wheeler carrying a gas cylinder which is against the traffic rules. Hence, it is decided that the rider of the two wheeler, carrying the gas cylinder, was responsible for the accident. The owner of the two wheeler and the insurance company of the two wheeler are not impleaded



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in the case. Hence, it is decided that the transport corporation is not liable to pay compensation and the transport corporation is exonerated from the liability and the order of the Tribunal is set aside. The claimants are at liberty to proceed against the owner of the two wheeler and the insurance company is concerned.

19. With the above direction, this Civil Miscellaneous Appeal is allowed and the appellant/ Transport Corporation, is permitted to get refund of the amount paid by them.

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Index: Yes / No
Internet : Yes / No

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To

- 1.The Special District Judge, Tiruchirappalli.
- 2.The Record Keeper, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.



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R. THARANI, J

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Pre-delivery Judgment made in
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