



C.M.A.Nos.520, 521, 522, 523 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.11.2023

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

C.M.A.Nos.520, 521, 522, 523 of 2015

and

M.P.Nos.1 +1+1 of 2015

The Managing Director,
Tamil Nadu State Transport
Corporation Limited, Thanjavur.

... Appellant in all the appeals

Vs.

1. Malarmani
2. Vijayakumar ... 1st & 2nd Respondents in C.M.A.No.520 of 2015

1. Malarmani
2. Rajendran ... 1st & 2nd Respondents in C.M.A.No.521 of 2015

Rajendran ... 1st respondent in C.M.A.No.522 of 2015

1. Rajendran
2. Malarmani ... 1st & 2nd Respondents in C.M.A.No.523 of 2015

3. The Divisional Manager,
Bajaj Allianz General Insurance
Company Limited,
Having Office at No.25/26,
Prince Tower, 4th Floor, College Road,
Nungambakkam, Chennai. ... 3rd respondent in C.M.A.Nos.520,
521 & 523 of 2015 and 2nd respondent



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in C.M.A.No.522 of 2015

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Common Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 31.05.2011 made in M.C.O.P.Nos.191,192, 193 & 194 of 2008 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Villupuram.

For Appellant in : Mr.Murali Vinodh
all appeals

C.M.A.No.520 of 2015

For respondents : Not Ready in Notice [R1]
Mr.K.Poomalai [R3]

C.M.A.No.521 of 2015

For respondents : No Appearance [R1]
Mr.P.Ganesan [R2]
Mr.K.Poomalai [R3]

C.M.A.No.522 of 2015

For respondents : Not ready in notice [R1]
Mr.K.Poomalai [R2]

C.M.A.No.523 of 2015

For respondents : Not ready in notice [R1]
No Appearance [R2]
Mr.K.Poomalai [R3]



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COMMON JUDGEMENT

Since the issue involved in the present appeals are one and the same they are disposed of by way of this common judgment.

2. It is the case of the claimants that on 17.07.2004 at about 2:30 a.m. in early morning hours, the vehicle bearing Reg.No.TN 10 P 2360 insured with the second respondent and driven by its driver Sasikumar and accompanied by his wife, son and mother-in-law were travelling in the said vehicle, the bus belonging to the 1st respondent / appellant corporation driven by its driver in a rash and negligent manner came and dashed against the vehicle in which the aforesaid persons were travelling and in the said accident all the four persons have filed the respective claim petition claiming compensation.

3. Before the Tribunal, the claimants examined himself as P.W.1 to P.W.4 and marked Exs.P.1 to Ex.P.11. No documents or witnesses were marked on behalf of the corporation. The insurance company examined R.W.1 and marked Ex. R1 was examined. After



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adjudication, the Tribunal awarded a sum of Rs.1,75,000/- under various heads in favour of the claimants. Aggrieved over the same, the appellant / corporation has preferred the present appeal.

4. The learned standing counsel appearing for the appellant submits that no opportunity was granted by the Trial Court to file counter and *ex parte* awards were passed. It is further the submission of the learned counsel that the FIR was registered against the deceased who was driving the TATA ACE vehicle as he had driven the vehicle in rash and negligent manner against the damages suffered for the bus M.C.O.P.No.166 of 2013 was filed by the appellant / corporation which was allowed by the Tribunal by passing an award for a sum of Rs. 9,339/- against the insurance company without considering the above the Tribunal herein has fixed the liability and negligence on the part of the appellant and the driver of the appellant bus without affording an opportunity to contest which is in violation of principles of natural justice. Therefore, necessarily the award passed has to be set aside and he seeks this court to allow the present appeals.



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5. Heard the learned counsel appearing for the respective claimant and the learned counsel appearing for the insurance company and perused the materials placed on record.

6. The factum of the accident is not in dispute. The grounds canvassed before this court is non grant of opportunity to the appellant / corporation to put forth its case. A perusal of materials available on record reveals that the appellant has not presented itself before the tribunal to defend the said case whereupon the tribunal was constrained to set the appellant *ex parte* thereafter proceeding with the recording witness and passing the award. When the appellant has not taken any earnest steps to defend its case before the tribunal, it cannot come now before this court and claim that compensation was not granted which is in violation of principles of natural justice. Therefore, the award requires to be set aside and the said contention cannot be accepted and the same is rejected.



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7. Coming to the question of award of compensation for the death of the deceased is concerned, the appellant based their case on the FIR which had pointed out the rash and negligent driving of the deceased who has driven the TATA ACE van. The FIR has been lodged at the instance of the driver of the bus. However, before the tribunal P.W4 was examined who was the eye witness to the occurrence had categorically deposed that it was the driver of the appellant transport corporation bus which was driven in a rash and negligent manner and hit against the vehicle in which the deceased were travelling. Though Ex.P3 the motor vehicle inspector's report speaks about damage caused to the bus belonging to appellant corporation. However, the report with regard to the TATA ACE van is silent and it is stated that it was totally damaged. The Tribunal has recorded a finding that since all the deceased had died to avoid any payment of compensation on the death, the FIR has been registered as if the deceased had driven the vehicle in a rash and negligent manner.



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8. When the evidence of P.W4 is in stark contrast to the ingredients in the FIR, necessarily the tribunal has properly appreciated the evidence of P.W4 and had come to a conclusion that it was the driver of the bus who has driven the vehicle in a rash and negligent manner and had caused the accident in which four lives were lost. Except for the above submission no material whatsoever has been placed by the appellant even before this court to show that the bus belonging to the corporation was not at fault. When the tribunal has gone through all the materials has come to a conclusion that the driver was rash and negligently driving the bus thereby causing the accident. In the absence of any contra materials, this court is of the considered view that the findings recorded by the tribunal is fair, reasonable and justified and same does not require any interference. With regard to the liability, the appellant has not created any issue. However, the careful perusal of the award passed by the tribunal, it is evident that the tribunal has taken into consideration all the aspects and based on the ratio laid down with regard to grant of compensation, the Tribunal awarded just and reasonable compensation for the death of the deceased who were involved in the accident. Such being the case no interference is warranted.



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M.DHANDAPANI, J.

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9. With the above observation these civil miscellaneous appeals are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

08.11.2023

Index : Yes / No

Speaking order / Nonspeaking order

Netrual Citation Case : Yes / No

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To

1.Motor Accident Claims Tribunal, Chief Judicial Magistrate, Villupuram.

2.The Section Officer, V.R.Section, High Court, Madras.

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