



C.M.A.No.2059 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :21.09.2023

CORAM

THE HON'BLE MR. JUSTICE P.VELMURUGAN

C.M.A.No.2059 of 2018

1. Dhanapal (died)
2. Mallammal
3. Mallika
4. Kalaivani
5. Jeyanthi
6. Thangam
7. Dhavamani
8. Indira

[Appellants 3 to 8 brought on record as LR's of the deceased first appellant viz.,Dhanapal, vide order dated 03.07.2018 made in C.M.P.Nos.7789 to 7791 of 2018 in CMA.SR.No.6708 of 2013]

... Appellants



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Vs.

The Managing Director,
Tamilnadu State Transport Corporation,
Tiruvannamalai.

... Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, against the judgment and Award made in M.C.O.P.No.438 of 2007 dated 12.09.2011 on the file of the Motor Vehicles Accident Claims Tribunal, [District Judge], Tiruvannamalai.

For Appellants : Mr.A.R.Balaji
for Mr.B.Vijay

For Respondent : Mr.S.S.Santhosakumar

J U D G E M E N T

The claimants have filed the claim petition in M.C.O.P.No.438 of 2007 before the Motor Vehicles Accident Claims Tribunal, Tiruvannamalai, seeking compensation for the loss of life of the deceased in a motor accident that took place on 04.02.2007. The Tribunal dismissed the claim petition filed by the claimants. Aggrieved by the dismissal order passed by the Tribunal, the claimants have filed the present Civil Miscellaneous Appeal.



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2. Facts of the present case are that, on 04.02.2007, at Kattupudur bus stop, Thiruvannamalai to Nathampoondi Road, when the bus arrived, the deceased tried to step into the bus, and at that time, the driver of the bus had started driving the bus in a rash and negligent manner, due to which, the deceased lost her balance and fell down from the bus, and thereby, she sustained multiple injuries and later, she succumbed to death. Hence the complaint.

3. Learned counsel appearing for the appellants/claimants submitted that, while the deceased tried to step into the bus, all of a sudden, the driver of the respondent/Corporation bus bearing Registration No.T.N.23N1302, without ascertaining as to whether all the passengers have entered into the bus or not, had driven the bus in a rash and negligent manner and hence, the accident had occurred. It is the duty of the driver and conductor of the bus that before starting to operate the bus, it has to be ascertained as to whether all the passengers have entered into the bus or not. Without ascertaining the same, they should not start the bus. P.W.2, who is the eye witness to the above accident, had clearly



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spoken about the manner of the accident and stated that, on the date of accident, he admitted the injured in the hospital. Since the injured was admitted in the hospital and also there was nobody to take care of her, the appellants/claimants could not file the complaint immediately after the accident. Hence, the claimants preferred the complaint only after the death of the injured.

4. Based on the said complaint, the Investigating Officer has conducted an enquiry and had recorded a statement under Section 161 Cr.P.C., from P.Ws.1 and 2. The driver of the bus, who was examined as R.W.1, had also admitted the accident. P.W.2, who is the eye witness to the accident, had clearly spoken about the manner of the accident and the respondent/Corporation has not denied the presence of P.W.2 in the place of accident at the time of accident. The Tribunal relying on the report filed by the Investigating Officer and due to non-availability of the eye witness to the accident and without considering the evidence of P.Ws.1 and 2 and also without considering the statement of P.W.1 recorded under Section 161 Cr.P.C., regarding the accident, had erroneously



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dismissed the claim petition. Hence the finding of the Tribunal regarding the liability is erroneous. Therefore, impugned Award passed by the Tribunal is liable to be set aside and this appeal may be allowed and compensation may be granted to the claimants.

5. Learned counsel appearing for the respondent/Transport Corporation submitted that the driver of the bus had been examined as R.W.1 who has clearly spoken about the accident. He has stated that 80 passengers were standing at the bus stop and on seeing the bus, all of them tried to enter into the bus and at that time, due to the crowd of the people who were standing near-by, the deceased fell down and she had sustained injuries. He has clearly stated that the deceased never entered into the bus at the time of accident. The investigating officer had also closed the case, as there is no eye witness to the abovesaid accident. It is not proved that the deceased died due to accidental injury. The accident had taken place on 04.02.2007 whereas, the complaint had been registered before the Police only on 12.03.2007. The claimants have not stated any reason for the delay in registering the F.I.R and denied the



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accident that had taken place on the alleged date of accident and also did not register the complaint on the same day itself. P.W.2 is not the eye witness to the incident and he was introduced only for the purpose of getting compensation, as if he is the eye witness. The Tribunal rightly observed the same and dismissed the claim petition filed by the claimants. Hence, there is no reason to interfere with the impugned Award passed by the Tribunal and therefore, the learned counsel for the Transport Corporation prayed to dismiss the Civil Miscellaneous Appeal.

6. Heard the learned counsel appearing on either side and perused the materials available on record.

7. According to the claimants, on 04.02.2007, while the deceased was stepping into the bus and without seeing the deceased as to whether the deceased has entered into the bus or not, all of a sudden, the driver of the respondent Corporation had driven the bus in a rash and negligent manner and hence, the deceased fell down from the bus and sustained



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grievous injuries and later she succumbed to injuries. According to the respondent/Transport Corporation, there is no such accident that had taken place on the date of accident and as there was no eye witness to the abovesaid alleged accident. A case was registered on 12.03.2007 belatedly after the date of accident which had occurred on 04.02.2007 and considering the Referred charge sheet letter copy and Case diary files, which have been marked as Exs.R1 and R2, there is no mention about the accident and it is not stated anywhere that the deceased sustained injuries only due to accident. There are no materials to show that the Doctor intimated about the accident to the Police and without even the intimation, the Police belatedly registered the case only on 12.03.2007. Further, from the evidence of P.W.1, it is clear that even during chief examination, he has not stated that P.W.2 informed him about the accident. P.W.2 has stated that he only admitted the deceased in the hospital and hence, he should have either intimated about the accident to the Doctor, while he was admitting the injured in the hospital, or he should have intimated about the accident before the Inspector of Police. In the statement recorded under section 161 Cr.P.C.,



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P.W.1, has not stated the reason as to why he has not intimated about the accident to the Doctor or to the Police till the death of the injured.

8. The learned counsel for the appellants/claimants, in support of his contentions placed reliance upon the following decisions reported in

1. *2023 Live Law (SC) 531:2023 INSC 621 [Mathew Alexander Vs Mohammed Shafi and another]*
2. *2007(2) CTC 318 [Metropolitan Transport Corporation Ltd Vs. N.Kaliaperuamal]*

The Citations referred to by the learned counsel for the appellants are not applicable to the present case at hand. The facts in the above referred to decisions are entirely different from the present case on hand and the same are distinguishable. Though P.W.2 has clearly stated that he was standing behind the deceased and he only admitted the deceased in the hospital, till the death of the deceased, he has not intimated about the accident either before the Doctor or before the Police. The claimants



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need not prove the case beyond all reasonable doubt, but they have to prove the accident with preponderance of probabilities, whereas in this case, appellants have not proved the foundational fact of the occurrence/ accident. Further, there is no entry in the Accident Register regarding the accident. F.I.R had also been registered belatedly. Till the death of the deceased, no case was registered regarding the accident or no intimation was received by the Police about the accident. Further, the claimants have not examined other passengers, who were travelling in the bus at the time of accident. In the absence of immediate intimation either before the Doctor or before the Police official within a reasonable time, this Court cannot believe the presence of P.W. 2 in the place of occurrence.

9. This Court as appellate court, can always re-appreciate the evidence independently and give independent findings. This Court being the appellate Court and as a final court of fact finding, had also re-appreciated the entire materials and evidence to the witnesses. While re- appreciating the materials, this Court had not rendered any reason for



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taking the other view of the Tribunal and there are no materials to give a finding that the deceased died only due to accident. Therefore, under these circumstances, this Court does not find any perversity in appreciation of evidence by the Tribunal. There is no merit in the appeal and the same is liable to be dismissed.

10. Accordingly, the Civil Miscellaneous Appeal is dismissed.

There shall be no order as to costs.

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Index: Yes/No

Speaking Order: Yes/No

Neutral Citation: Yes/No



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To

1. The Motor Vehicles Accident Claims Tribunal, [District Judge]
Tiruvannamalai.
2. The Section Officer,
VR Section,
High Court, Madras.



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P.VELMURUGAN, J.

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