



C.M.A. (MD)No.260 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

**C.M.A.(MD)No.260 of 2022 and
CMP(MD).No.2445 of 2022**

M/s. Tamil Nadu State Transport Corporation Ltd.,
rep. by its General Manager,
Tirunelveli
Office at
No.2 Thiruvananthapuram Road,
Vannarapettai,
Tirunelveli – 627 003

...Appellant/ respondent

Vs.

1.Kanagaraj
2.Pensia

... Respondents/petitioners

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the order and decretal order, dated 31.03.2021 passed in MCOP.No.154 of 2019, on the file of the Motor Accidents Claims Tribunal / III Additional District Court, Tirunelveli.

For Appellant : Mr. R. Rajamohan

For respondents 1 and 2 : Mr.T. Selvakumaran



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JUDGMENT

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Challenging the Award passed by the Tribunal, the present appeal came to be filed by the appellant / Transport Corporation.

2. The brief facts leading to the filing of the appeal is as follows:

(i) The deceased was 16 years at the time of accident and a student of 11th standard in Government Higher Secondary School at Nadukallur. On 16.11.2018, he drove the motorcycle along with his friend Muthukrishnan as pillion rider and at that time, the bus bearing Regn.No.TN 30 N 0775 came in the opposite direction in a rash and negligent manner and dashed against the motorcycle, as a result, the deceased succumbed to injuries.

(ii) The respondent / appellant took a stand that the father of the deceased lodged the First Information Report indicating that the deceased himself had dashed against the bus. Hence, it is the contention that the driver of the bus was not negligent and in fact, the accident was caused due to the rash and negligent act of the deceased in riding the motorcycle. On



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the side of the deceased, PW.1 father of the deceased filed a claim petition under Section 163(A) of the Motor Vehicles Act.

(iii) On the side of the petitioners, PW.1 was examined and two documents have been exhibited as Exs.P1 and P2. No oral as well as documentary evidence has adduced on the side of the respondent.

(iv) The Tribunal considering the amendment of the Motor Vehicles Act as well as the Notification issued by the Ministry of Road Transport and Highways, New Delhi, dated 22.05.2018, has fixed the compensation as Rs.5,00,000/-.

3. Challenging the same, the present appeal came to be filed by the appellant / Transport Corporation.

4. The main contention of the learned counsel appearing for the appellant is that the deceased himself was a Tortfeasor. The claim petition filed under Section 163(A) of the Motor Vehicles Act is maintainable only against the owner of the vehicle or insurer and not against the third party and therefore, his contention that the Tribunal has not considered those



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aspects and passed an award. Therefore, submitted that the Award has to be set aside.

5. Whereas, the learned counsel appearing for the respondents would submit that Section 163(A) of the Act was introduced only on the basis of no fault liability and it is fairly maintainable as per old Section 92(A) of the Act, 1939. Therefore, his contention that now the second Schedule is also amended and the amount has been restricted to Rs.5,00,000/- and now, the amended Section 164 of the Act has been introduced and the amount payable is Rs.5,00,000/-. Therefore, his contention that the accident took place much before the amendment at the relevant point of time under Section 163(A) of the Act is very much in existence, on the statute. Therefore, as per the Notification, dated 22.05.2018 issued by the Ministry of Road Transport and Highways, New Delhi, the Tribunal has rightly fixed the compensation. His further contention that the compensation claimed under Section 163(A) of the Act, there is no requirement in proving the negligence on the part of the offending vehicle. Hence, in the light of the above, the following point raise for consideration:



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Whether the Tribunal is right in awarding compensation under Section 163(A) of the Motor Vehicles Act?

6. The accident is not disputed. The only contention raised in the appeal that PW.1 himself has lodged a complaint indicating that the deceased himself have driven the vehicle in a rash and negligent manner and dashed against the bus. The compensation cannot be claimed under Section 163(A) of Motor Vehicles Act. It is to be noted that Section 163(A) of the Act is based on the Principle of “no fault liability”. Therefore, merely because, the First Information Report filed by the father of the deceased indicating that the deceased dashed against the bus with negligence cannot be presumed on the part of the deceased. Once, the application is filed under Section 163(A) of the Act requirement of proving the negligence of offending vehicle does not arise at all. It may be head on collusion. Such being the position, statutory obligation to pay the compensation cannot be defeated merely on the technical grounds.

7. Once the very purpose under Section 163(A) of Motor Vehicles Act, itself is brought on statue based on the principle of “no fault liability”, the object of the Act cannot be defeated. It is relevant to note



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that it is the option of the claimants either to proceed under Section 163 of the Act or Under Section 163(A) of the Act. Once an application is filed under Section 163(A) of the Act, requirement of proving the negligence on the offending vehicle driver does not arise at all.

8. This Court is of the view mere FIR itself, there is not a proof to show that the deceased was a tortfeasor, as the First Information Report is not a substantial piece of evidence. The appellant / Transport Corporation has not adduced any evidence. If claim petition is filed under Section 166 of the Act claimant could have examined the other witnesses to prove head on collusion. The negligence on the part of the driver of the bus would have been orally proved in that case. In fact, the claimants would have got more compensation, but, unfortunately, the application has been filed under Section 163(A) of the Motor Vehicles Act.

9. Such view of the matter this Court is of the view that merely on the basis of the some statements said to have been contained in the First Information Report the same cannot be taken as substantial piece of evidence to hold that the deceased was a tortfeasor.



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10. The Apex Court in the Judgment reported in **1996 ACJ 555 (K.Nandakumar Vs. Managing Director, Thanthai Periyar Transport Corporation Ltd.,)** dealt with Section 92-A (4) of the Motor Vehicles Act, 1939 held that collusion between a bus and motorcycle due to the negligence of the motorcyclist, held that despite the negligence on the part of the rider the of the motorcycle, the injured is entitled to compensation on the principle of 'no fault liability'.

11. In the Judgment of the Hon'ble Apex Court reported in **2012 ACJ 1 (National Insurance Company Limited Vs. Sinitha and others)** held that Section 163(A) of the Act has pointed out 'no fault liability' and it is every right under the provision of the Act and none of the provisions of the Act which is suffering under Section 163(A) of the Act was amended therein. The Apex Court further held that the Insurance Company failed to establish that the deceased was negligent.

12. Considering the above said Judgments the second schedule was also amended by Notification, dated 22.05.2018, where the compensation in the case of the death shall be Rs.5,00,000/- it is also relied upon by the Tribunal and awarded a compensation of Rs.5,00,000/-.



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13. Such view of the matter, this Court finds, no merit in this appeal. Accordingly, this Civil Miscellaneous Appeal is dismissed and the award, dated 31.03.2021 made in MCOP.No.154 of 2019, on the file of the Motor Accidents Claims Tribunal / III Additional District Court, Tirunelveli is hereby confirmed. No costs. Consequently, the connected Miscellaneous Petition is closed.

14. The appellant / Transport Corporation is directed to deposit the amount awarded before the Tribunal to the credit of MCOP.No. 154 of 2019 on the file of the Motor Accidents Claims Tribunal / III Additional District Court, Tirunelveli, within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the claimants are entitled to withdraw their shares as per the apportionment fixed by the Tribunal on filing necessary application before the Tribunal.

02.06.2023

Index : Yes/No
Internet : Yes/No
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To

1. The Motor Accidents Claims Tribunal / III Additional District Court,
Tirunelveli.

2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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N.SATHISH KUMAR, J.

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