



C.M.A(MD)No.997 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

C.M.A(MD)No.997 of 2023

and

C.M.P.(MD) No.13857 of 2022

The General Manager,
Tamil Nadu State Transport Corporation Ltd.,
Tirunelveli.

... Appellant

.VS.

1.Subbulakshmi
2.Thirumalaiselvam
3.Nalla Sivanammal
4.Senthivel Murugan
5.Sivalakshmi

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicle Act, to set aside the order of the Motor Accident Claims Tribunal cum Sub Court, Ambasamudram made in M.C.O.P.No.12 of 2021, dated 03.03.2023 and allow the appeal with costs.

For Appellant : Mr.S.Micheal Heldon Kumar

For Respondents : Mr.R.Ponkarthikeyan



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JUDGMENT

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This appeal is filed challenging the liability to pay compensation awarded in M.C.O.P.No.12 of 2021, dated 03.03.2023, on the file of the Motor Accident Claims Tribunal cum Sub Court, Ambasamudram, for the death of one T.Mookkan, while travelling in a bus bearing registration No.TN-72-N-1199, on 06.08.2019.

2. The respondents filed a claim petition seeking compensation of Rs.10,00,000/-. It is stated in the claim petition that on 06.08.2019 at about 10.00 a.m., the deceased Mookkan boarded the aforesaid bus for travelling from Mukkudal to Vickramasingapuram. When the bus crossed Cambridge School, Agasthiarpatti, the driver drove the bus in a rash and negligent manner, hit on the speed breaker and caused minor injuries to the passengers. Mookkan sustained severe neck injury in the accident. He became breathless and nobody noticed it. Mookkan died, due to the neck injury, which involved cervical spine injury. He did not get down from the bus and it was noticed that he was dead when the bus reached its destination. The Post-mortem Report concluded saying that the deceased died due to cervical spine injury. The injury has been caused



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because of the rash driving of the bus driver, when negotiating the speed breaker. The respondents are his wife and children. They are dependants on his income. Therefore, this petition.

3. The appellant filed a counter denying the averments made in the claim petition. It is stated that the deceased was travelling from Mukkudal to Vickramasingapuram. He did not get down at Vickramasingapuram bus stop and therefore, the driver tried to wake him up and he did not wake up. Therefore, information was given to 108 Ambulance. On coming to the occurrence place, the staff of 108 Ambulance made a check up and confirmed the death of the deceased. The deceased's brother Balakrishnan had given a statement stating that the deceased was suffering from heart disease and was under medication. Thus, the claim made against the appellant is not appropriate.

4. During the enquiry before the Tribunal, on the side of the claimants, P.W.1 and P.W.2 were examined and Ex.P1 to Ex.P7 were marked. On the side of the Transport Corporation, R.W.1 to R.W.3 were examined and Ex.R1 and Ex.R2 were marked.



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5. On going through the oral and documentary evidence, the Tribunal found that the deceased suffered cervical spine injury while travelling in the bus and that was caused due to the reasons stated in the petition and thus, awarded a compensation of Rs.6,91,000/-.

6. The learned counsel for the appellant submitted that there is no evidence to show that the bus driver had driven the bus in a rash and negligent manner, while approaching a speed breaker and that caused the fracture of cervical bone of the deceased. The deceased might have had the injury found in the postmortem report even before the accident. Thus, the finding that Transport Corporation bus was responsible for the death of the deceased by the rash and negligent driving of the driver, is not correct. He further submitted that the First Information Report was registered in Crime No.214 of 2019 for the offence under Section 174 of IPC and the same was closed as 'Further Action Dropped'.

7. In response, the learned counsel for the respondents submitted that the Post-mortem Report clearly revealed that the deceased died of cervical spine injury. There was no reason for the deceased to suffer this cervical spine injury, but for the rash and negligent driving of the bus by



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the driver of the Transport Corporation driver, while negotiating the speed breaker.

8. Considered the rival submission and perused the records.

9. The case of the respondents is that the Transport Corporation driver had driven the bus bearing Registration No.TN-72-N-1199 in a rash and negligent manner, while negotiating the speed breaker and that was the cause for the deceased suffering from cervical spine injury. On the other hand, it is seen from the counter affidavit filed by the appellant that it is the case of the appellant that the deceased Mookkan had heart disease and he died of natural cause. Admittedly, no eye-witness was examined or the person who travelled in the bus along with the deceased was examined in support of the respondents' case that the bus driver had driven the bus in a rash and negligent manner. The appellant examined R.W.1 to R.W.3. R.W.1 was the bus driver. It is naturally his evidence to the effect that he was not responsible for the death of the deceased by his rash and negligent driving of the bus. Ex.R1 is the letter said to have been given by the brother of the deceased. A reading of this letter shows that one Balakrishnan claiming himself as brother of the deceased stated



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that his brother T.Mookkan had heart disease and was taking medication for that. He did not get down from the bus. On examination, he was found dead. Since he had heart disease, he stated that deceased died of natural cause. However, in proof of this letter, the said Balakrishnan was not examined as a witness. What is clear from Ex.R1 and counter filed by the appellant is that appellant had taken a position that the deceased died of natural cause, probably, because of his heart ailments. Therefore, it is necessary to ascertain the cause of death of the deceased.

10. The Post-mortem Certificate of the deceased is produced and marked as Ex.P2. A perusal of the postmortem certificate shows that the following injuries were noted:

Diffuse contusion is noted around the neck

***On Dissection of Neck: Cervical Vertebrae 5
& 6 found fractured with surrounding soft tissue
contusion. Spinal Cord is lacerated at site.***

11. The post-mortem doctor gave opinion as to cause of death as “the deceased would appear to have died of cervical spine injury”. It is pertinent to extract the relevant portion of the Postmortem Certificate for the better understanding:



“The Following Ante-Mortem Injuries were noted:

Diffuse Contusion is noted around the neck.

On Dissection of Neck: *Cervical Vertebrae 5 & 6 found fractured with surrounding soft tissue contusion. Spinal Cord is lacerated at site.*

Other findings: Pleural cavities and peritoneal cavity: appear normal.

Heart: *appears normal and coronary vessels are patent. **Hyoid bone:** Intact.*

Stomach: *about 200 gm of partly digested food particles, nil specific smell, mucosa congested.*

Intestine: *about 100 gm of partly digested food particles, nil specific smell, mucosa congested.*

Lungs, Liver, Spleen and Kidneys: *appear normal, c/s congested.*

Brain: *appears normal, c/s. Congested.*

Bladder: *empty.*

Opinion as to the cause of the death: *The deceased would appear to have died of Cervical Spine Injury”*

12. It is claimed by the appellant that the deceased had heart attack and he died of natural causes. However, the Postmortem Certificate shows that the heart appears normal and coronary vessels are patent. Other vital organs of the deceased were found to be normal. The only



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reason for the death of the deceased was the fracture at Cervical vertebrae 5 and 6. Considering the nature of the injury suffered, it is probable that these injuries might have been caused to the deceased as claimed in the claim petition that the Transport Corporation driver had driven the bus in a rash and negligent manner, while negotiating the speed breaker and in that process, the deceased suffered the fracture of Cervical Vertebrae 5 and 6. There is no other reason for suffering these injuries except, the manner as indicated above.

13. Merely because the First Information Report was closed as 'Further Action Dropped', it cannot be concluded that the driver was not at fault. From the oral and documentary evidence available, especially Ex.P2, it can be safely concluded that the deceased suffered fracture on the Cervical Vertebrae 5 and 6, because of rash and negligent driving of the bus by the Transport Corporation driver and that was the cause for his death.

14. This Court is of the view that no ground is made out for interfering with the finding of the Tribunal that the deceased died because of rash and negligent driving of the bus driver. The quantum of



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compensation awarded was also appropriate, considering the age and occupation of the deceased. Thus, there is no reason to interfere with the award of the learned Tribunal and same is confirmed

15. In fine, this Civil Miscellaneous Appeal is dismissed and the order passed by the Tribunal is upheld. The appellant – Transport Corporation is directed to deposit the compensation awarded by the Tribunal, i.e., Rs.6,91,000/- together with interest at the rate of 7.5% per annum from the date of claim petition till the date of realisation, less the award amount already deposited, if any, to the credit of M.C.O.P.No. 12 of 2021, on the file of the Motor Accident Claims Tribunal cum Sub Court, Ambasamudram, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit being made by the appellant, the respondents herein are at liberty to withdraw the same, as apportioned by the Tribunal, less the award amount if any already withdrawn, after following due process of law. No costs. Consequently, connected miscellaneous petition is closed.

Index :Yes/No
Internet :Yes/No
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G.CHANDRASEKHARAN,J.

cp

To

The Motor Accident Claims Tribunal/
Subordinate Judge, Ambasamudram.

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