



C.M.A. (MD)No.99 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 20.03.2023

CORAM:

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A.(MD)No.99 of 2017

A.Pandi

...Appellant/ Petitioner

Vs.

Tamil Nadu State Transport Corporation Ltd.,
Rep., by General Manager,
Kumbakonam Division-3,
Maruthupathi Nagar, Managiri, Karaikudi,
Sivagangai District.

... Respondent/Respondent

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the portion of the judgment and decretal order dated 16.06.2016 made in M.C.O.P.No.1135 of 2015 on the file of the Motor Accident Claims Tribunal Sessions Judge, Communal Clash Cases Court, Madurai.

For Appellant : Mr. K.C.Ramalingam
For Respondent : Mr.D.Sivaraman

JUDGMENT

The present appeal has been filed by the claimant seeking enhancement of the compensation of the award passed by the Motor Accident Claims Tribunal in M.C.O.P.N.1135 of 2015. It is alleged in the claim petition that the claimant's



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mother, while she was alighting from the bus, in bus-stop, the driver has suddenly started the vehicle without waiting for the whistle from the conductor. The deceased was dragged into the bus and she was run over by the bus and she had died on the spot. According to the claimant, she was herding cows and she was engaged in milk vending business and earning a sum of Rs.5,000/- per month. The claimant sought a sum of Rs.5,00,000/- as compensation.

2. The respondent/ Transport Corporation has filed a counter contending that the deceased attempted to alight from a running bus without waiting for the bus to reach the bus-stop. Therefore, the entire negligence is on the part of the deceased lady and the Corporation is not liable to pay any compensation. They have further contended that the bus-stop is faraway from the place, where the deceased lady attempted to alight and therefore, they are not liable to pay any compensation.

3. The tribunal, after considering the sketch and the FIR lodged by the conductor of the bus, had arrived at a conclusion that the deceased was responsible for the accident and has awarded a sum of Rs.50,000/- under Section 140 of the Motor Vehicles Act. This award is under challenge in the present appeal.



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4. The learned counsel appearing for the appellant/claimant had contended that the complaint was lodged by the conductor of the bus immediately. However, after investigation, the Police authorities found that the driver had started the vehicle without waiting for the whistle from the conductor. The deceased had only attempted to alight from the bus in bus-stop and not in a different place as contended by the Transport Corporation. He relied upon Ex.B.2, charge sheet. He further relied upon Ex.B.4-rough sketch to point out that the rough sketch will indicate the scene of occurrence is very closer to the bus-stop. He further pointed out that there was no negligence on the part of the lady and she had not alighted from a running bus.

5. Per contra, the learned counsel appearing for the respondent/Transport Corporation had mainly relied upon the FIR, which was lodged by the conductor and contended that even before the bus could reach the bus-stop, the lady has attempted to alight from the bus and in view of the said fact, she was dragged into the bus and the bus ran over her. He further relied upon the rough sketch to show that the scene of occurrence is much ahead of the bus-stop. Therefore, it is clear that she had alighted from the bus much ahead of the bus-stop. Hence, he prayed



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for confirming the award passed by the tribunal under Section 140 of the Motor Vehicles Act.

6. I carefully considered the submissions made on either side.

7. The claimant had contended that his mother was attempting to alight from a bus only in a bus-stop and the driver has started the bus without waiting for the whistle from the conductor. However, the conductor of the bus has lodged a complaint on the same day that the accident happened only due to the negligence on the part of the deceased. After investigation, the Police authorities have arrived at a findings that the bus was infact stopped in the bus-stop. When the deceased was alighting from the bus in the bus-stop, the driver has started the vehicle without waiting for the whistle. That apart, this Court can take a judicial notice of the fact that the lady aged about 53 years would never venture to jump from a running bus, especially, when the bus-stop is few meters ahead, even as per the case of the Transport Corporation.

8. In view of the aforesaid facts, this Court is of the opinion that the findings arrived at by the tribunal that the accident had happened only due to the



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negligence on the part of the deceased is not legally sustainable and the same is set aside. The accident was happened only because of the fact that the driver without noting the alighting of a passenger from the front door had started the vehicle even without waiting for the whistle from the conductor.

9. The deceased was aged about 53 years old and though the claimant had claimed that she was earning a sum of Rs.5,000/-, no records have been placed before the Court for the said quantum. Being a home-maker certainly this Court can take a view that she was earning a sum of Rs.3,000/- per month. After deducting 1/3, it could be arrived at Rs.2,000/-. The correct multiplier for her age is 11. Therefore, the loss of income could be arrived at Rs.2,64,000/-. The loss of parental consortium to the son could be fixed at Rs.40,000/-. The funeral expenses could be fixed at Rs.15,000/-. The loss of estate could be fixed at Rs.15,000/- and the transport charges could be fixed at Rs.10,000/-. The total compensation could be fixed at the rate of Rs.3,44,000/-(Rupees Three Lakhs and Forty Four Thousand only). The said amount will carry interest at the rate of 7.5% from 30.03.2015 till the date of realization.



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WEB COPY 10. This Civil Miscellaneous Petition is allowed to the extent as stated above. No costs.

20.03.2023

NCC : Yes/No

Index : Yes/No

Rmk

To

1.The Motor Accident Claims Tribunal Sessions Judge,
Communal Clash Cases Court, Madurai.

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



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R.VIJAYAKUMAR, J.

Rmk

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