



C.M.A.No.2754 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

Reserved on 27.02.2024	Pronounced on 28.03.2024
---------------------------	-----------------------------

CORAM

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.2754 of 2021

1.Velankanni, S/o.Malayappan

2.Aruldoss @ Doss, S/o.Malayappan

3.Sagayam, S/o.Late Pandurangan

4.Uthramary, D/o.Malayappan

... Appellants

Vs.

The Managing Director

Tamil Nadu State Transport Corporation (Villupuram) Ltd.,

Kanchipuram Region

Kanchipuram District

... Respondent

Prayer: Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Decree and Judgment dated 16.07.2019 made in MCOP.No.1745 of 2016 on the file of the Motor Accident Claims Tribunal, (Principal Special Judge), Chennai.

For Appellants : Mr.K.Varadha Kamaraj

For Respondent : Mr.C.R.Suresh Kumar
Standing counsel



C.M.A.No.2754 of 2021

WEB COPY

JUDGMENT

The Appeal has been filed against the Decree and Judgment dated 16.07.2019 made in MCOP.No.1745 of 2016 on the file of the Motor Accident Claims Tribunal, (Principal Special Judge), Chennai.

2.The claim Petitioners are the Appellants herein and they filed this Appeal, seeking enhancement of compensation awarded in MCOP.No.1745 of 2016 on the file of the Motor Accident Claims Tribunal, (Principal Special Judge), Chennai. For the sake of convenience, the parties are referred to as per their ranking before the trial Court.

3.The legal representatives of the deceased Malaiyappan filed MCOP.No.1745 of 2016 on the file of the Motor Accident Claims Tribunal, (Principal Special Judge), Chennai, seeking compensation and filed this Appeal against the dismissal of MCOP.No.1745 of 2016.

4.The factum of the accident is not disputed by the Respondent. However, manner of the accident was disputed.

5.During the trial, on the side of the claim Petitioners, PW1 & PW2 were



C.M.A.No.2754 of 2021

examined & Ex.P1 to Ex.P6 were marked and on the side of the Respondent RW1 was examined and no document was marked.

6.Heard the learned counsel appearing on behalf of the claim Petitioners and the learned counsel appearing on behalf of the Insurance Company.

7.As per the pleadings, the deceased was travelling as a passenger in the foot board of the front entrance of the bus, having Reg. No.TN 21 G 1202 from Anaikattu salai, Pavunjur, Cheyyur Taluk, Kancheepuram District. When the students are trying to board the bus, the deceased was trying to alight from the bus and fell down in the process and due to which, rear wheel of the bus ran over the head of the said Malayappan and he died on the spot. Disputed the same, counter affidavit has been filed by the Transport Corporation.

8.After trial, the trial Court held that the deceased was a foot board passenger, who had invited the accident by his own negligence and dismissed the claim Petition.

9.As per pleadings, the claim Petitioners are the legal heirs of one



C.M.A.No.2754 of 2021

Malayappan, S/o.Arockiyasamy, who died in the road transport accident occurred on 12.01.2016 at about 16.45 hours, while he was travelling as a passenger in the foot board of the front entrance of the bus bearing Reg. No.TN 21 G 1202 proceeding near Anakkattu Salai, Cheyyur Taluk at Pavunjur Bazaar. On perusal of Ex.P.1/FIR, I find that the trial Court has not properly appreciated the evidence of this case. As per the recital of the FIR, which is given by the son of the deceased that his father was about to board the bus along with school students and he tripped and fell down in the rear wheel of the bus and died on the spot. Thus it can be seen that there is no negligence on the part of the driver of the bus, but it is on the part of the deceased. Admittedly, the vehicle was not in motion. After perusing Ex.P1/FIR, I find that the version of PW1 and PW2 is only a after thought for the purpose of making the claim Petition.

10.The evidence of RW1 is totally unconnected as compared to the recital in FIR. The claim Petitioners have to plead and prove their case. They have taken two different stands, one is as per Ex.P.1/FIR and another one is PW2's version. Hence, I find that finding of the trial Court that the deceased has invited the accident on his own negligence, is hereby confirmed on a different



C.M.A.No.2754 of 2021

reasoning stated supra. Since the deceased has invited the accident, the negligence cannot be fixed upon the driver of the transport corporation bus consequently, the claim Petition cannot be entertained.

11.In fine, this Civil Miscellaneous Appeal is dismissed. No costs.

28.03.2024

Index : Yes/No
Neutral citation : Yes/No
Speaking Order/Non-Speaking Order

sai

To

The Principal Special Judge
Motor Accident Claims Tribunal
Chennai.



WEB COPY



C.M.A.No.2754 of 2021

RMT.TEEKAA RAMAN.J,

sai

Pre-delivery Judgment made in

C.M.A.No.2754 of 2021

Dated: 28.03.2024