



CMA.No.937 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.08.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.937 of 2023 and
C.M.P.No.8593 of 2023

The Managing Director,
Tamil Nadu State Transport Corporation Limited,
No.37, Mettupalayam Road,
Coimbatore.

... Appellant

vs.

1. A. Sudarmani
2. Nirmala
3. K. Balakrishnan

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 15.03.2022 in M.C.O.P.1632/2018 on the file of the Motor Accident Claims Tribunal, III Additional District Court, Coimbatore.

For Appellant : Mr.M. Murali Vinodh
For R1 & R2 : Mr. P. Saravanasowmiyan
R3 : No appearance.

J U D G M E N T

Questioning the liability to pay compensation to the claimants,
the present appeal is filed by the Managing Director, Tamil Nadu State
Transport Corporation Limited.



CMA.No.937 of 2023

2. The respondents 1 and 2/claimants filed a claim petition in

M.C.O.P. 1632/2018 under Section 166(1) (c) of the Motor Vehicles Act before the Motor Accident Claims Tribunal, III Additional District Court, Coimbatore, seeking compensation of Rs.25,00,000/- for the death of their son Prabakaran in a road accident that took place on 05.12.2009.

3. The case of the claimants is that on 05.12.2009 Prabakaran (deceased) was riding his two wheeler bearing Registration Number TN 37 AY 7333 with his friend Sudakaran as pillion rider and both of them were proceeding to Pollachi from Valparai. At 30th hairpin bend, a bus bearing Registration Number TN 38 N 1310 belonging to the State Transport Corporation Limited came in the opposite direction and hit the two wheeler as a result of which Prabakaran fell down and died on the spot.

4. According to the claimants, the rash and negligent driving of the driver of the bus bearing Registration Number TN 38 N 1310 was the cause of the accident and therefore they are liable to pay compensation to them.



CMA.No.937 of 2023

5. The appellant State Transport Corporation Limited contested the claim petition by filing its counter.

6. The Tribunal, after analysing the evidence on record, fastened negligence on the part of the rider of the two wheeler as well as the driver of the bus in the ratio 50:50 and directed the respondents to pay compensation of Rs.8,16,500/- (50% on total compensation of Rs.16,33,000/-) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of realisation to the claimants.

7. Aggrieved over fastening of negligence on the part of the driver of the bus, the present appeal is filed by the State Transport Corporation.

8. Heard Mr.M. Murali Vinodh, learned counsel for the appellant and Mr. P. Saravanasowmiyan, learned counsel for the respondents 1 and 2.



9. Mr.M. Murali Vinodh, learned counsel for the appellant

State Transport Corporation Limited would contend that though the FIR (EX.P1) was registered against the rider of the two wheeler, the Tribunal had fastened 50% contributory negligence on the part of the driver of the bus. He therefore contended that the State Transport Corporation is not liable to pay any compensation amount.

10. Per contra, Mr. P. Saravanasowmiyan, learned counsel for the respondents 1 and 2 contended that the Tribunal after analysing the evidence on record had fastened negligence on the part of the driver of the bus and there is no necessity for this Court to interfere with the findings recorded by the Tribunal.

11. A perusal of the records shows that the two wheeler driven by Prabakaran (deceased) was descending the hill and he was actually proceeding towards Pollachi from Valparai. The bus was coming in the opposite direction and at the 30th hairpin bend the bus turned from right to left and hit the two wheeler. According to Sivarama Prabhu (P.W.2) and Loganathan (P.W.3), the eye witnesses to the occurrence, the driver of the



bus did not sound the horn and hit the two wheeler. It is to be noted that

Loganathan (P.W.3) had given information to Kadamparai police Station, Coimbatore, with regard to the accident and based on his information FIR was registered against the rider of the two wheeler. However, P.W.3 in his evidence before the Tribunal had stated that his signature was obtained by the police in the complaint and that he did not give any written complaint to the police. P.W.2 has stated that he was travelling in the bus as a passenger and that the driver of the bus was rash and negligent in driving his bus. The accident took place in the year 2009 and the Claim Petition was filed in the year 2018. It is not the case of P.W.2 that he already knew the claimants and the deceased Prabakaran. He did not produce any ticket to show that he was actually travelling in the bus bearing Registration Number TN 38 N 1310. The Tribunal, therefore, based on the manner of accident, had fastened negligence on the part of the driver of the bus and the rider of the two wheeler in the ratio 50:50.

The relevant portion of the order of the Tribunal is extracted hereunder:

"8.To show that P.W.2 was a passenger in the bus no bus ticket is produced. And further the address of P.W.2 shows that he is a resident of Thiru Nagar Madurai. He has claimed that he went to Valparai to invite his relatives to a



family function. But no invitation card is produced to show that there was a function in his family and he did go to Valparai to invite his relatives. How, he came into contact with the petitioners nearly after 10 years from the accident and how he appeared before this Tribunal for giving evidence in this case are not explained at all. Hence, this Tribunal is not inclined to place reliance upon his evidence. Any how, it is to be noted that P.W.3 is the informant to police about this occurrence. The same is evident from Ex.P1.

9. Under this circumstance, his evidence is a vital one. He has stated that on 05.12.2009 when he was at his Tea shop by 3.30 p.m the bus TN 38 N 1310 turned at 30th Hairpin bend without sounding horn and it hit the two wheeler coming in the opposite direction. During his cross examination he has stated that he informed the police about the incident through phone and he did not submit any written information to police. He has further stated during re examination that police obtained his signature ion the first information report. Though in Ex.P1 it is stated that he gave written information to police stating that the two wheeler driven by the deceased came rashly and negligently and dashed against the bus he disowns the same in his evidence and contends that his signature was obtained in the first information report by the police. Hence, the informant in the



criminal case has given a version contradictory to the police case and gives as explanation for the same. At this juncture, his evidence cannot be ignored.

10. And further RW1 the 1st respondent has deposed that after alighting passengers at Umaiyaandimudangu when he was proceeding slowly towards Valparai the deceased was riding his two wheeler rashly and negligently in the opposite direction and he lost control of the two wheeler and dashed upon his bus. But during cross examination he has stated that generally during a hill ride at hairpin bends the vehicles which normally go left would go right and due to this the driver of the vehicle coming in the opposite direction may get confused. This evidence of R.W.1 and the evidence of P.W.3 show that in the blind curve when the bus was moving it was on the right side of the road and on the opposite side of the same came the two wheeler of the deceased and it without anticipating the bus collided with the same.

11. And the evidence of P.W.3 further shows that the bus did not sound any horn. These facts show that if the driver of the bus had sounded the horn and at the same if the rider of the two wheeler had expected an uphill vehicle and rode the same accordingly the accident would have been averted. Hence this Tribunal holds that both the deceased



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CMA.No.937 of 2023

and the first respondent are equally responsible for the accident."

The above observation of the Tribunal cannot be found fault with and therefore I do not see any reason to interfere with the same. Accordingly, the Civil Miscellaneous Appeal stands dismissed. No costs. Consequently connected miscellaneous petition is closed.

28.08.2024

Index : Yes/No
Speaking/Non-speaking order
Neutral Citation : Yes / No
bga

To

1.Motor Accident Claims Tribunal, III Additional District Judge, Coimbatore.

2.The Section Officer,
VR Section, Madras High Court, Chennai.

R.HEMALATHA, J.

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