



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 08.03.2024

CORAM

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.4425 of 2019

1.Chinnammal

2.Balachandar

3.Ravichandran

Kuppusamy (Died)

... Appellants

Vs.

1.P.Sivamai

2. The United India Insurance Company Ltd,
Branch Office,
Namakkal.

3. The Tamil Nadu State Transport
Corporation (Dn-I), Salem Ltd,
Rep. By its Managing Director,
No.12, Ramakrishna Road,
Salem 636 007.

... Respondents

Prayer: Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgement and Decree dated 31.01.2007 made in MACT OP No.208 of 2002 on the file of the Motor Accident Claims Tribunal cum Sub Court at Mettur, Salem District.



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For Appellants : Mr.M.R.Jothimanian
For R1 : No appearance
For R2 : Ms.C.Harini
for M/s.M.B.Gopalan Associates
For R3 : Mr.D.Nitin (Senior Counsel)

J U D G M E N T

The Appeal has been filed against Judgement and Decree dated 31.01.2007 made in MACT OP No.208 of 2002 on the file of the Motor Accident Claims Tribunal cum Sub Court at Mettur, Salem District.

2.The claim petitioners are the Appellants herein and they filed this Appeal, challenging the award passed in MACT OP No.208 of 2002 , which was dismissed on the ground of liability as well as on quantum. For the sake of convenience, the parties are referred to as per their ranking before the trial Court.

3. The factum of the accident is that, on 31.01.2002 at about 02.20.p.m.,



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when the deceased Pachamuthu, employee of Tamil Nadu State Transport Corporation (Salem Division) was driving the bus from Mettur to Madurai had met with an accident near Dindugal, since the driver of the opposite vehicle P.Sivamani (driver of 1st respondent's lorry herein) drove in a rash and negligent manner dashed against the Transport Corporation Bus. In the said accident, the said Pachamuthu died and hence his legal heirs have filed the claim petition.

4. Pending appeal, minors are declared as majors. The owner of the lorry namely 1st respondent herein remained ex-parte before the tribunal. The 2nd respondent Insurance company has filed witness statement implicating the claim on the ground that, the accident taken place due to the rash and negligent driving of the deceased Pachamuthu. Therefore, the driver of the 1st respondent's lorry is not liable to pay compensation. Consequently, the 2nd respondent/ Insurance Company cannot be fastened with any liability. The 3rd respondent Transport Corporation filed witness statement alleging that, the accident had taken place due to the rash and negligent driving of the driver of the 1st respondent's lorry.

5. During the trial, on the side of the claim Petitioners, first claim petitioner was examined and marked as PW1 and the conductor of the Bus was



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examined and marked as PW2 and one of the passenger was examined and marked as PW3. On the side of the Respondents, the staffs from United India Insurance Company was examined and marked as RW1 and the Transport Corporation Assistant is examined as RW2.

6. During cross examination of PW2, the Insurance Company has contended that one of the passenger who had sustained injuries has moved M.C.O.P.No.186 of 2002 before the District Court, Sivagangai and another deceased moved M.C.O.P.No.162 of 2002 before the Chief Judicial Magistrate, Karur, wherein based upon the evidence in connection with the very same accident, two Tribunals have held that the accident has taken place due to the negligent driving of the driver of the Transport Corporation Bus, who is the victim herein. The Tribunal has considered the exhibit R2 and R3 in the above stated judgement of the other Tribunal and dismissed the MCOPs, holding that the legal heirs are not entitled for any compensation. Aggrieved against the said findings, the claim petitioners have filed this present petition.

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



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8. It is the submission of the learned counsel for the petitioner that employment of the claim petitioner under the 3rd respondent has been duly established by Ex.P8 to Ex.P10 and hence the tribunal ought not to have dismissed the claim petition against all the respondents and ought to have awarded as against R3 atleast under the Workmen Compensation Act. He further submitted that, PW2 and PW3 are the persons who travelled in the very same bus on the fateful day and PW3 is one of the passenger who had deposed that the accident has taken place due to the rash and negligent driving of the driver of the offending lorry and he being the independent witness his evidence should not be taken slightly.

9. The learned counsel for the 2nd respondent Insurance company made submission in support of the judgements of the trial Court.

10. After perusing the deposition of R2 & R3, the judgements was given by the Motor Accident Tribunal, Sivagangai in M.C.O.P.No.186 of 2002 and Chief Judicial Magistrate, Karur in M.C.O.P.No.162 of 2002 respectively. Those judgements have been rendered by the competent Court based upon the



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evidence produced before the Court. The Tribunal ought to have assigned reasons for rejecting the oral evidence of PW3.

11. Be that as it may, I find that as contended by the learned counsel for the appellant, as per Ex P7 (driving licence), the deceased Pachamuthu driver of the Transport Corporation Pachamuthu is employed with the 3rd respondent. As per Ex.P8 salary certificate, his salary is Rs.11,000/- and Ex.P9 is the LR certificate of claim petitioner and also Ex.P10 is the salary certificate. The employment with the Transport Corporation is not denied as it could be seen from the evidence of PW2, the conductor who travelled along with the deceased on the fateful day. The date of accident being 31.01.2002 and therefore the case is governed by the provisions of the Act before the G.O. The maximum salary could be taken as Rs.8,000/- and it has to be multiplied by 60/100. Because as per the Driving Licence EX P7, the Driver's age is about 49 years and appropriate ratio fixed in the Annexure to the Workmen Compensation is Rs.156.47.

$$\text{Rs.8,000/-} * 60\% * \text{Rs.156.47} = \text{Rs.7,56,056/-}$$



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12. Accordingly, Rs.7,51,056 and Rs.5,000 towards funeral expenses is ordered. In toto **Rs.7,56,056/- along with 12% interest** and the 3rd respondent has to pay the said award. Hence, in the exercise of powers under MV Act coupled with 151 of CPC, though claim petition has been filed under Motor Accident Claim Tribunal, compensation is awarded as per the tabular column in Workman Compensation Act Annexure II.

13. In total, the appellant / claim petitioners are entitled to a sum of **Rs.7,56,056/- (Rupees Seven Lakhs Fifty Six Thousand and fifty Six only) along with 12% interest from the date of the accident.**

14. In fine,

(i) this Civil Miscellaneous Appeal stands allowed in respect of R3 and stands dismissed in respect of R1 & R2.

(ii) the 3rd respondent respondent/Transport Corporation is directed to deposit the award amount of of **Rs.7,56,056/- (Rupees Seven Lakhs Fifty Six Thousand and fifty Six only) along with 12% interest from the date of the**



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accident before the Tribunal, within a period of eight weeks from the date of receipt of a copy of this order, less the amount, if any already deposited.

(iii) on such deposit being made, the claim petitioners/appellants is permitted to withdraw the entire enhanced award amount with accrued interest and costs, less the award amount, if any, already withdrawn, by filing necessary application before the Tribunal.

08.03.2024

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

Sma

To

1. The United India Insurance Company Ltd,
Branch Office,
Namakkal.
2. The Tamil Nadu State Transport
Corporation (Dn-I), Salem Ltd,
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RMT.TEEKAA RAMAN.J,

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