



C.M.A.(MD).No.297 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.04.2024

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THE HON'BLE MR.JUSTICE G.ILANGO VAN

C.M.A.(MD).No.297 of 2021
and C.M.P.(MD).No2467 of 2021

M/s.Tamilnadu State Transport Corporation Limited,
Rep by its Managing Director,
Rani Thottam, Nagercoil,
Kanyakumari District.

... Petitioner

Vs.

1.Vasantha

2.Panniappan

... Respondents

PRAYER : Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, to call for the records relating to the order and decreetal order dated 11-11-2019 passed in MCOP.No.300 of 2015 by the Motor Accident Claims Tribunal (Special Sub Court dealing with MCOP Cases), Tirunelveli and to set aside the same.

For Appellant : Mr.R.Rajamohan

For Respondents : Mr.M.Jothiramalingam



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JUDGMENT

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This appeal has been directed against the order and decretal order dated 11-11-2019 passed in MCOP.No.300 of 2015 by the Motor Accident Claims Tribunal (Special Sub Court dealing with MCOP Cases), Tirunelveli.

2.The facts in brief:

On 11.12.2014 at about 09.45 p.m. the deceased Nimoth was riding his two wheeler bearing registration No.TN 74 Q 2462 from Kovalam to Kanniyakumari on the west to east direction. On that time, the vehicle bearing registration No.TN 74 N 1670 was driven by its driver in rash and negligent manner, came in opposite direction and hit the deceased. As a result of which, he sustained grievous injuries and died on the spot itself.

3.Over the occurrence a case in Crime No.660 of 2014 was registered for the offences under Section 304 A of IPC on the file of the Inspector of Police, Kanniyakumari Police Station. The offending vehicle belongs to the respondent corporation, who is the appellant



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herein.

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4.The deceased completed his higher secondary school in March 2002 and thereafter, undergone Industrial Fitter Training for two years and obtained Course Completion Certificate also. Apart from that he was also issued with Conductor license in the year 2013. He was working as Piping Foreman From January 2005 upto February 2006 in the Bharat Petroleum Corporation Limited, Cochin. Apart from that he was also worked in Dubai and thereafter, returned to India and working in a Watch Company in Kanniyakumari for a monthly salary of Rs.15,000/-. Apart from that he was also working as part time job in a private company and earning Rs.6,500/- per month, who was aged about 29 years at the time of accident. Claiming compensation amount of Rs.20,00,000/- the petition was filed by the claimants, who are the father and the mother of the deceased.

5.The above said application was resisted by the appellant by filing counter stating that the occurrence took place not because of the rash and negligent driving on the part of the offending vehicle driver,



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but, on the part of the deceased. He came in an opposite direction in rash and negligent manner and hit the opposite coming vehicle. In spite of best efforts made by the driver of the offending vehicle, the occurrence could not be averted. And apart from that other conventional counters were also raised.

6.Before the Tribunal on the side of the claimants two witnesses were examined. 9 documents were marked. On the side of the appellant one witness was examined and no documents were marked.

7.At the conclusion of the enquiry, the Tribunal finds that the occurrence took place because of the rash and negligent driving on the part of the appellant driver and regarding the compensation it fixes the same at Rs.16,40,800/- with usual costs and interest, etc. Against which, this appeal is preferred.

8.Heard both sides.

9.At the time of arguments, the learned counsel for the appellant



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submitted that the deceased consumed alcohol and was on its influence, which is evident from the postmortem certificate. So because of the influence of alcohol the deceased came in the opposite direction in the wrong route and invited the accident, for which, the appellant vehicle driver cannot be hold responsible.

10.He is also referring to the sketch drawn by the Investigating Officer during the course of investigation and pointed out that the vehicle was on the left side of the road, which according to him, will indicate that there was a contributory negligence on the part of the deceased also. Apart from that with regard to the compensation it was submitted that there was no documentary proof or evidence to show the correct yearly income of the deceased. So notional income ought to have been taken into account.

11.Per contra, the learned counsel for the respondent would submit that the driver of the offending vehicle was not examined on the side of the appellant. So in the absence of the evidence on the side of the appellant's side driver, the evidence of the eye witnesses, who was



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examined as PW2 on the part of the respondent must be taken into consideration.

12. Even though the learned counsel for the appellant has submitted that the deceased was under the influence of the alcohol, there is no indication in Ex.P2 to show that the deceased had consumed alcohol. No other documentary evidence is produced by the appellant to show that he consumed alcohol before the Tribunal. But before this Court, the copy of the final opinion of the chemical report is produced, wherein, it has been stated that there is trace of consumption of ethyl alcohol before the death. But without proper petition under Order 41 Rule 27 of CPC, the copy of the document cannot be taken into consideration for finding that the deceased was under the influence of alcohol. Having failed to produce the document before the Tribunal, it is now too late for the appellant, to insist upon this Court to take this into account, it is rejected out right.

13. Further, regarding the occurrence as stated above, the learned counsel for the appellant relies upon the sketch drawn by the



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Investigating Officer during the course of investigation. But mere production of the document, without proving the same by examining the Investigating Officer, cannot be taken that it is a proved document with regard to the contents. Why the driver of the offending vehicle was not examined on the side of the appellant side is not explained. So in the absence of any evidence on the side of the appellant, the evidence of PW2, who is the eye witness was considered by the trial Court.

14. Reading of the cross examination of PW2 does not indicate that the deceased came in wrong direction and hit the vehicle. So in the absence of any such positive evidence contravening the evidence of PW2, the evidence of RW1 who was the conductor of the offending vehicle will not have any evidentiary value than that of the eye witness. Further, it is seen that it is a night occurrence. RW1 has also admitted that the offending vehicle had damage on the right side of the vehicle. So the contention on the part of the appellant that deceased was responsible for the accident cannot be taken into account and rightly it has been rejected by the Tribunal. I find absolutely, no reason to differ from the finding recorded by the tribunal.



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15.Regarding the quantum, the tribunal has arrived monthly income as notional income of Rs.11,000/- per month by perusing the documents produced by the claimant regarding the job, monthly income, etc. Considering the educational qualification of the deceased and age fixing of the monthly income at the rate of Rs.11,000/- per month cannot be considered to be excessive. So except notional income the other customary amount or future prospectus was also added by taking into account the settled proposition of calculation of parental consortium, loss of estate, funeral expenses etc., cannot be considered to be excessive, but on the settled proposition of calculation. So regarding the compensation amount, I find absolutely no reason to differ. So all the points that raised by the appellant are rejected and the award passed by the tribunal is confirmed.

16.Accordingly, this civil miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

1.The Special Sub Judge, Motor Accident Claims Tribunal (Special Sub Court dealing with MCOP Cases), Tirunelveli.

2.The Section Officer,
E.R.Section/V.R.Section,
Madurai Bench of Madras High Court, Madurai.



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G.ILANGO VAN,J.

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