



C.M.A.No.2507 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

DATED : 21.02.2025

CORAM

**THE HONOURABLE MR.JUSTICE R.SURESH KUMAR
and
THE HONOURABLE DR.JUSTICE A.D.MARIA CLETE**

C.M.A.No.2507 of 2022

Rajeswari

... Appellant

-Vs-

The Managing Director,
Tamil Nadu State Transport Corporation (VPM) Ltd.,
No.3/137, Salamedu,
Vazhuthareddy and Post,
Villupuram - 605 401.

... Respondent

PRAYER : Appeal under Section 173 of the Motor Vehicles Act, 1988, against the order and decree dated 11.07.2022 passed in M.C.O.P.No.180 of 2019 by the Motor Accident Claims Tribunal / Principal District and Sessions Judge, Ariyalur.

For Appellant : Mr.S.Kamadevan

For Respondent : Mr.T.Chandrasekaran



C.M.A.No.2507 of 2022

J U D G M E N T

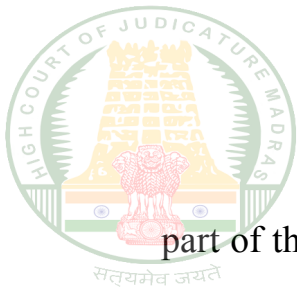
WEB COPY (Judgment of the Court was delivered by **R.SURESH KUMAR, J.**)

This civil miscellaneous appeal has arisen out of the award passed by the Motor Accident Claims Tribunal / Principal District and Sessions Judge, Ariyalur dated 11.07.2022 made in M.C.O.P.No.180 of 2019.

2. Due to the road accident which was taken place on 01.01.2019, the deceased Vinothraj who was riding a motorcycle bearing Registration No.PY-05-W-0299, was expired. The pillion rider one Ragunathan sustained some injuries.

3. The deceased Vinothraj is a bachelor and he was working as a Grade-II Police Constable at the Tamil Nadu Police Department. In order to seek compensation for the death of the said Vinothraj, his mother, Rajeswari who is the sole dependent and claimant had filed the said MCOP seeking a compensation of Rs.80,00,000/-.

4. Based on the evidence adduced before the trial Court, the Tribunal has come to the conclusion that, in the accident that was taken place on 01.01.2019 the son of the appellant / claimant died due to the rash and negligence on the



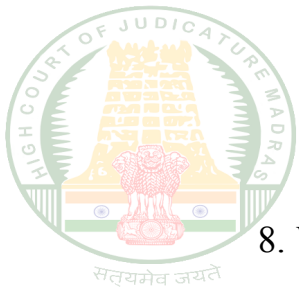
C.M.A.No.2507 of 2022

part of the deceased who drove the motorcycle and in this context, the Tribunal refused to pass on the negligence on the part of the driver of the bus of the respondent Transport Corporation who drove the bus at the time of the accident. Resultantly, the Tribunal has dismissed the claim petition itself through the impugned award.

5. Heard Mr.S.Kamadevan, learned counsel appearing for the appellant / claimant and Mr.T.Chandrasekaran, learned counsel appearing for the respondent / Tamil Nadu State Transport Corporation.

6. In fact pursuant to the road accident on 01.01.2019, immediately a FIR was registered based on the complaint given by P.W.2 who is none other than the pillion rider of the two wheeler. Based on the FIR, investigation was made by the concerned Police who had filed a final report under Section 173 of Cr.P.C. These documents, i.e., FIR as well as final report filed by the Police has been marked as Exs.P1 and P2 before the trial Court.

7. If we peruse the FIR and final report filed by the Police, rash and negligence has been attributed mainly on the driver of the respondent Transport Corporation bus.



C.M.A.No.2507 of 2022

8. When that being the position, the Tribunal by taking Ex.R6 which was marked through R.W.2 has found out that the rear left side body of the bus was damaged and that was taken into account by the Tribunal and has come to the conclusion that, the bus was stationed to take a right on the speed breaker, at that time, the two wheeler ridden by the deceased hit the backside of the bus, therefore, the negligence cannot be attributed on the driver of the bus, but only the rider of the two wheeler who is the victim.

9. Further reason stated by the Tribunal to come to such a conclusion is that, as per Ex.R1, the breath smell of alcohol pertains to the victim according to the finding given by the Doctor was recorded in the accident register. Therefore, these are the two factors which influenced the mind of the Tribunal to come to the conclusion that, the rash and negligence cannot be attributed on the driver of the bus, but only rider, the victim, therefore, the claimant is not entitled to seek any compensation, that is how the MCOP came to be dismissed through the impugned award.

10. However, the Tribunal has not taken into account Exs.P1 and P2 which is FIR and investigation report filed by the Police. How the Tribunal has overcome these Exs.P1 and P2 which were marked as documents on behalf of



C.M.A.No.2507 of 2022

the claimant's side which is originated from the concerned Police, one is FIR

and another is the final report under Section 173 of Cr.P.C. Brushing aside easily these documents cannot be justifiable on the part of the trial Court and therefore, to that extent, the finding given by the Tribunal is not proper.

11. Moreover, when the rear left side body of the bus damaged it means that the bus wants to take a right turn without noticing the two wheeler which comes straight and naturally the chance would be the two wheeler to hit the left rear side of the bus.

12. In this context, if the rider of the two wheeler also was to be so conscious, he could have applied the brake and to the considerable extent, he might have been in a position to minimize the damage of the accident, therefore the bus driver also contributed for the rash and negligence or without noticing the two wheeler coming, he may hit any part of the vehicle since he had not applied the brake and hence, the negligence was also on the part of the driver of the bus, but at the same time, the rider of the two wheeler also could have applied his brake instead of hitting the left rear side of the bus, therefore, to that extent, the rider of the two wheeler might also been in a position to ride the vehicle rashly. When that being the position, we can find out that, because of



C.M.A.No.2507 of 2022

the rash and negligence on the part of both the driver of the bus as well as the rider of the two wheeler who is the victim in this case such accident has taken place which caused the death of the victim, therefore, it is the case of contributory negligence which we can fix 50 : 50 between the two vehicles, i.e., bus of the respondent / Transport Corporation and the two wheeler which the victim was riding at the time of the accident.

13. In view of this discussion and conclusion which we have reached, the finding given by the Tribunal in dismissing the MCOP on the ground that, the entire responsibility having been fixed only on the rider of the two wheeler for the rash and negligent riding the bus driver has been exonerated, such a decision since has been arrived at by the Tribunal we are not accepting the same, therefore, the said award which is impugned herein is liable to be interfered with, hence, it is set aside.

14. As a result of which, the matter is remitted back to the Tribunal for appreciating the evidence to fix the quantum of compensation, for which the appellant / claimant also is entitled to get. In this context, the contributory negligence herein with 50 : 50 as indicated above shall be admitted by the Tribunal.



C.M.A.No.2507 of 2022

WEB COPY 15. With this observation and direction, this Civil Miscellaneous Appeal is ordered accordingly by remitting the matter back to the Tribunal for reconsideration and decide the same accordingly. Since the evidence has already been recorded, the Tribunal shall take endeavour to complete the trial and pass an award as early as possible preferable within a period of three months from the date of receipt of a copy of this judgment.

16. In view of the matter being remitted back to the trial Court / Tribunal, the appellant is entitled to get the Court fee as per the extant Rules. No costs.

(R.S.K., J.) (A.D.M.C., J.)
21.02.2025

NCC : Yes / No
Index : Yes / No
Speaking Order : Yes / No

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To

1. The Motor Accident Claims Tribunal /
Principal District and Sessions Judge,
Ariyalur.

2. The Section Officer,



V.R. Section, High Court,
Chennai.

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C.M.A.No.2507 of 2022



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C.M.A.No.2507 of 2022

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C.M.A.No.2507 of 2022

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