

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.3.2009

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THE HONOURABLE MR.JUSTICE R.SUDHAKAR

C.M.A.No.815 of 2009

and

M.P.No.1 of 2009

The Managing Director,
Tamilnadu State Transport
Corporation Ltd.,
(Coimbatore Division-II),
Erode.

... Appellant/2nd Respondent

vs.

1.Saravanan,
2.Maragatham,
3.N.Selvaraj.

(3rd respondent is given up) ... Respondents/Petitioners 1 and 2
1st respondent

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 25.4.2008 passed in M.C.O.P.No.322 of 2007 on the file of the Motor Accidents Claims Tribunal (Additional District Judge, Fast Track Court No.4), Bhavani, Erode District.

For appellant : Mrs.B.Vijayalakshmi

JUDGMENT

The Tamilnadu State Transport Corporation is on appeal challenging the award dated 25.4.2008 passed in M.C.O.P.No.322 of 2007 on the file of the Motor Accidents Claims Tribunal (Additional District Judge, Fast Track Court No.4), Bhavani, Erode District.

2. It is a case of fatal accident. The brief facts of the case are as follows:- The accident in this case happened on 27.9.2005 at 7.30 a.m., at Vijayamangalam to Uthukuli road. The deceased minor Vieknesh, a 12 years student, studying in 6th

standard, was travelling along with his mother and sister in the appellant transport corporation bus. Due to rash and negligent driving by the driver of the bus, the bus hit a lorry. In that accident, the passenger Vieknesh suffered head injuries and died. Several other passengers also died and many suffered grievous injuries. On the death of the minor Vienknesh, the father aged 41 years and the mother aged 36 years filed a claim for compensation in a sum of Rs.5 lakhs.

3. In support of the claim, the father of the deceased was examined as P.W.1 and the mother as P.W.2. Exs.A-1 to A-7 were marked, the details of which are as follows:-

Ex.A-1 is the photocopy of FIR, dated 27.9.2005,

Ex.A-2 is the photocopy of rough sketch dated 27.9.2005,

Ex.A-3 is the photocopy of observation mahazar dated 27.9.2005,

Ex.A-4 is the photocopy of Motor Vehicle Inspector's Inspection Report dated 28.9.2005,

Ex.A-5 is the photocopy of charge sheet dated 12.12.2005,

Ex.A-6 is the photocopy of post-mortem certificate dated 27.9.2005,

Ex.A-7 is the legal heir certificate dated 19.12.2005.

Mr.Kamaraj, the driver of the appellant transport corporation was examined as R.W.1. No document was marked on behalf of the appellant transport corporation, the second respondent before the Tribunal.

4. The Tribunal based on the oral statement of the eye witness, P.W.2, the mother of the deceased boy, the F.I.R., Ex.A-1; rough sketch Ex.A-2; observation mahazar Ex.A-3, Motor Vehicle Inspector's Report Ex.A-4 and the charge sheet in the criminal case Ex.A-5 came to the conclusion that the driver of the appellant transport corporation bus was rash and negligent driving and was responsible for the accident. Such finding of the Tribunal is not seriously disputed by the learned counsel for the appellant transport corporation. The only contention raised by the learned counsel for the appellant is that the compensation on the death of 12 years old boy is excessive.

5. In so far as the compensation is concerned, the Tribunal dealt with the same in paragraphs 8 and 9 of the award. Based on the post-mortem certificate, the age of the deceased was fixed as 12 years. The Tribunal adopted the income of the deceased notionally at Rs.15,000/- per annum and placing reliance on the decision of the Apex Court in Manju Devi and another - vs.

- Musafir Paswan and another reported in 2004(2) TN MAC 262(SC), applying multiplier 15 granted a sum of Rs.2,25,000/- as compensation on the death of the 12 years old boy. In addition to the above, the Tribunal granted compensation under conventional heads. In all, the Tribunal granted the following amounts as compensation with interest at 7.5% per annum:-

Sl.No.	Head	Amount granted by the Tribunal
1	Loss of pecuniary benefits	Rs.2,25,000/-
2	Loss of love and affection to the parents on the death of their child	Rs. 20,000/-
3	Funeral expenses	Rs. 5,000/-
4	Transport expenses	Rs. 1,000/-
	Total	Rs.2,51,000/-

6. The plea of the appellant's counsel is that the sum of Rs.2,25,000/- granted as compensation on the death of 12 years boy is excessive. Such plea has to be rejected at the outset, since the Tribunal has rightly determined the compensation keeping in mind the decision of the Apex Court in Manju Devi and another - vs. - Musafir Paswan and another reported in 2004(2) TN MAC 262 (SC). Further, the parents are entitled to compensation under conventional heads and that cannot be disputed. Therefore, the total compensation granted in a sum of Rs.2,51,000/- with interest at 7.5% is justified. No good ground is made out by the learned counsel for the appellant to reduce the same.

7. Finding no merit, this Civil Miscellaneous Appeal is dismissed at the admission stage. Counsel for the appellant seeks for eight weeks' time to deposit the award amount and is granted and on such deposit, the respondents/claimants are permitted to withdraw the same as per the order of the Tribunal. Consequently, connected miscellaneous petition is closed.

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Sd/
Asst.Registrar

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/true copy/

Sub Asst.Registrar

To

The Additional District Judge,
Fast Track Court No.4,
(The Motor Accidents Claims Tribunal),
Bhavani, Erode District.

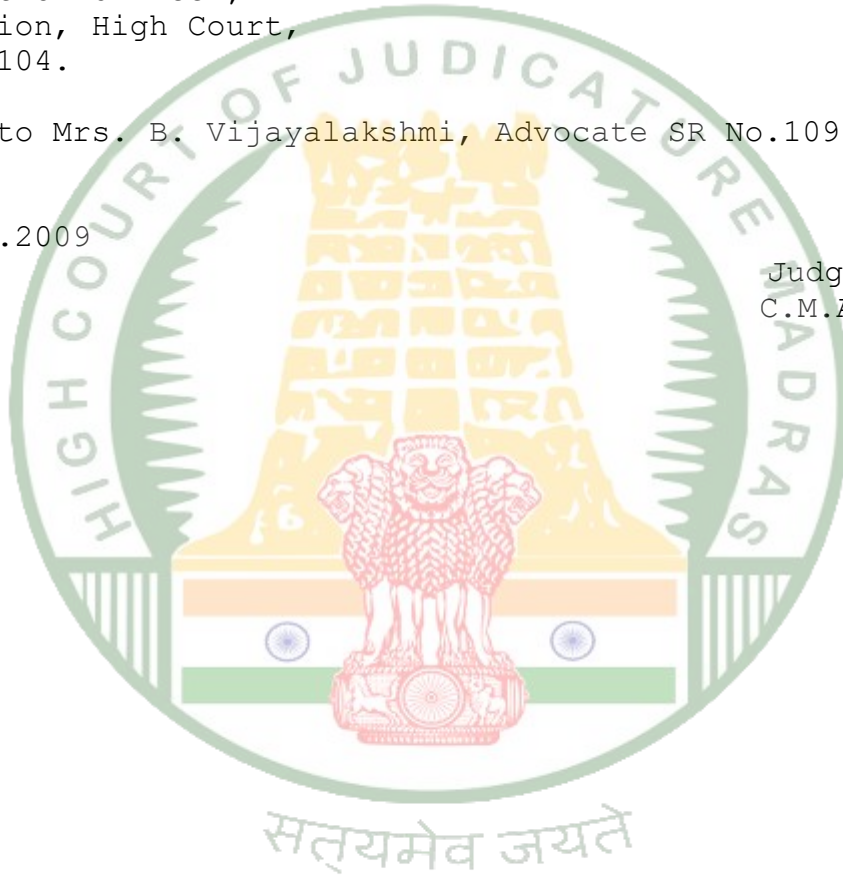
Copy to:-

The Section Officer,
VR Section, High Court,
Madras.104.

+ 1 cc to Mrs. B. Vijayalakshmi, Advocate SR No.10986

SSN(CO)
SR/17.4.2009

Judgment in
C.M.A.No.815 of 2009



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