

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.06.2013

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

C.M.A.No.1149 of 2008 &  
M.P.No.1 of 2008

The Managing Director,  
The Government State Express Transport  
Corporation Limited, Chennai. .... Appellant /Respondent

Vs.

1.Rajathi  
2.Shanmugam  
3.Rajini ... Respondents /Petitioners

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the award made in M.C.O.P.No.215 of 2006, dated 06.02.2007, on the file of the Motor Vehicles Accident Claims Tribunal and Sub Judge, Chidambaram.

For Appellant : Mrs.B.Vijayalakshmi  
For Respondents : Mr.A.Murugan for R-1 and R-2  
R-3 (Not ready notice)

J U D G M E N T

The appellant / respondent has preferred the present appeal against the judgment and decree passed in M.C.O.P.No.215 of 2006, on the file of the Motor Vehicles Accident Claims Tribunal, Sub Judge, Chidambaram.

2. The short facts of the case are as follows:-

The petitioners, who are the wife and sons of the (deceased) Veerasamy have filed the claim in M.C.O.P.No.215 of 2006, claiming compensation of a sum of Rs.10,00,000/- from the respondent for the death of the said Veerasamy in a motor vehicle accident. It was submitted that on 17.03.2006, at about 06.00 hours, when the (deceased) Veerasamy was walking along the extreme left of the shoulder of the road at Thimmasamuthram Village, the respondent's bus bearing registration No.TN-01-N-6741, driven in a rash and negligent manner, dashed against the deceased. As a result, he sustained grievous injuries and succumbed to his injuries while being taken to the hospital. At the time of accident, the (deceased) was working as a farmer and construction

worker and earning Rs.7,000/- per month. Hence, the petitioners have filed the claim against the respondent / TNSTC Limited, Chennai.

3. The respondent, in his counter has submitted that on 17.03.2006, the driver of the bus driving the bus slowly and carefully from Chennai to Kumbakonam. At about 08.45 hours, the (deceased) crossed the road, all of a sudden, from left to right and on seeing this, the driver of the bus had applied brakes and turned the bus to the right side of the road and was about to stop the bus. But, in spite of this, the (deceased) came into contact with the bus and invited the accident. It was submitted that the claim was excessive.

4. The Motor Accidents Claims Tribunal had framed four issues for consideration in the case, viz.,

"(i) Whether the deceased Veerasamy, the husband of the first petitioner died due to the rash and negligent act of the respondent's driver?

(ii) Whether the respondent is liable to pay damages to the petitioners?

(iii) Whether the petitioners are entitled to the compensation as prayed for?

(iv) To what other relief are the petitioners entitled?"

5. On the petitioners side, two witnesses were examined and two documents were marked as Exs.P1 to P2, viz., Ex.P1-copy of F.I.R., Ex.P2-copy of postmortem report. On the respondent's side, one witness was examined and no document was marked.

6. P.W.2, the eyewitness of the accident had adduced evidence that on 17.03.2006, he and the deceased were walking home from Cholatharam and that the deceased was walking 50 feet ahead of him along the shoulder of the road. He deposed that the respondent's bus bearing registration No.TN-01-N-6741, was driven rashly and negligently, without sounding of horn and hit behind the deceased and caused the fatal injuries.

7. R.W.1, the driver of the respondent's bus had adduced evidence that on 17.03.2006, he was driving the bus carefully and cautiously and that when the bus was near Cholatharam Village, the (deceased) had crossed the road suddenly without seeing the bus and that on seeing this, he had applied brakes and turned the bus to the right and stopped it and that the (deceased) had dashed himself against the halted bus and met with the accident.

8. The Tribunal, opined that if the bus had been stopped, as alleged by R.W.1, the deceased would not have sustained grievous

injuries. The Tribunal, on relying on the evidence of P.W.2 the eyewitness of the accident, held that the accident had been caused by the rash and negligent driving by the driver of the respondent's bus and hence, held the respondent liable to pay compensation to the petitioners.

9. P.W.1, the wife of the deceased had adduced evidence that her husband owned 66 cents of agricultural lands and he used to work in his farm and also worked as a mason and was earning Rs.200/- per day. She deposed that her husband was the only breadwinner for the family and after his death, she could not cultivate the lands and the land remains fallow.

10. The Tribunal, observed that the deceased was aged 47 years at the time of his death. The Tribunal, on taking the notional income of the deceased as Rs.3,000/- per month and on adopting a multiplier of '13', awarded a sum of Rs.3,12,000/- as compensation under the head of 'loss of income ( $3000 \times \frac{2}{3} \times 12 \times 13$ ); Rs.15,000/- was awarded for transport and funeral expenses and Rs.20,000/- was awarded under the head of loss of love and affection. In total, the Tribunal awarded a sum of Rs.3,47,000/- as compensation to the petitioners and directed the respondent to pay the said sum together with interest at the rate of 9% per annum from the date of filing the claim till date of payment of compensation, with costs, within 30 days from the date of its order.

11. Aggrieved by the award passed by the Tribunal, the respondent / TNSETC, Chennai has preferred the present appeal.

12. The learned counsel for the appellant has contended in his appeal that the Tribunal failed to note that the deceased was crossing the road, without observing the traffic rules and came into contact with the bus and invited the accident. It was contended that the Tribunal erred in fixing the age of the deceased at 47 years without any age proof. It was also contended that the award for loss of consortium should not be more than Rs.5,000/- as per the second schedule of the Motor Vehicles Act, but the Tribunal erred in awarding a sum of Rs.20,000/- under this head. Hence, it was prayed to set-aside the award passed by the Tribunal.

13. The highly competent counsel, Mr.A.Murugan appearing for the claimant submits that the driver of the bus had committed the fatal accident and hence, a criminal case had been filed against him. The deceased was aged 47 years and he was involved in agricultural operations as a coolie and he was the breadwinner of the family. It was submitted that even though the claim had been proved against the Transport Corporation, the Tribunal had not granted an adequate compensation to the claimants.

14. On considering the factual position of the case and arguments advanced by the learned counsels on either side and on perusing the impugned award of the Tribunal, this Court does not find any discrepancy in the conclusions arrived at regarding negligence, liability and quantum of compensation. This Court is of the view that the F.I.R. has been registered against the driver of the bus and the deceased was aged about 47 years and was also an earning member. Hence, the quantum of compensation awarded by the Tribunal is reasonable.

15. It is seen from the Court records that the entire compensation amount with interest had been deposited. Now, all the claimants are at liberty to withdraw their apportioned share amount, with proportionate interest thereon, lying in the credit of M.C.O.P.No.215 of 2006, on the file of the Motor Vehicles Accident Claims Tribunal, Sub Judge, Chidambaram, after filing a Memo, along with a copy of this order.

16. In the result, the above appeal is dismissed. Consequently, the order and decree passed in M.C.O.P.No.215 of 2006, on the file of the Motor Vehicles Accident Claims Tribunal, Sub Judge, Chidambaram, dated 06.02.2007, is confirmed. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

r n s  
To

The Sub Judge,  
Motor Vehicles Accident Claims Tribunal,  
Chidambaram.

Copy to: The Section Officer, V.R. Section, High Court, Madras.

1 cc to Mr. A. Murugan, Advocate, SR.No.32781

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M.P.No.1 of 2008

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pmk.5.6.2014