



C.M.A(MD)No.855 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **24.04.2024**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.855 of 2018

and

C.M.P(MD)No.9421 of 2018

The Managing Director,
Tamil Nadu State Transport Corporation,
Railway Station Road,
Kumbakonam,
Thanjavur District.

... Appellant/1st Respondent

Vs.

1.Veeramani	... 1st Respondent/1st Petitioner
2.Vinoth	... 2nd Respondent/2nd Petitioner
3.Vijila	... 3rd Respondent/3rd Petitioner
4.Vinotha	... 4th Respondent/4th Petitioner
5.Rajmohan	... 5th Respondent/5th Petitioner
6.Selvaraj	... 6th Respondent/2nd Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree passed by the Motor Accident Claims Tribunal, Special District Court, Thanjavur in M.C.O.P.No.1389 of 2015, dated 02.06.2016.



C.M.A(MD)No.855 of 2018

For Appellant : Mr.A.V.B.Krishna Kanth

For Respondents : No appearance

JUDGMENT

The instant appeal has been filed by the State Transport Corporation challenging the award made in M.C.O.P.No.1389 of 2015 on the file of the Motor Accident Claims Tribunal, Special District Court, Thanjavur, primarily on the ground of liability and quantum.

2. As per the claim petition, the deceased was a pillion rider in a two-wheeler, which was owned by the second respondent in the claim petition. On 22.05.2015 at about 02.30 pm., when the deceased was travelling as a pillion rider, which was driven by the first claimant, the bus belonging to the first respondent Transport Corporation was parked in Chatram Bus-stand. At the relevant point of time, another two-wheeler was driven in a rash and negligent manner and dashed against the two-wheeler, in which the deceased was a pillion rider and she fell down. At the relevant point of time, the driver of the Transport Corporation Bus has driven the vehicle in a rash and negligent manner and dashed against the deceased person and she succumbed to the injuries. According to the



C.M.A(MD)No.855 of 2018

claimants, both the two-wheeler rider and the driver of the Transport Corporation are equally responsible for the said accident.

3. The Transport Corporation had filed a counter contending that the two-wheeler belonging to the second respondent alone was driven in a rash and negligent manner and hit against the two-wheeler, in which the deceased had travelled. Therefore, the driver of the bus could not have expected that the pillion rider in which the deceased has travelled would fall down. Therefore, the driver of the Transport Corporation Bus is not responsible for the said accident. The Tribunal after considering the evidence on either side, arrived at a finding that there is composite negligence on the part of the driver of the Transport Corporation Bus as well as the second respondent, who had driven the offending two-wheeler. Both of them were jointly and severally held liable. The Tribunal has further proceeded to direct the appellant Transport Corporation to pay compensation and to recover the same from the second respondent, namely, the owner of the offending two-wheeler. The Tribunal has proceeded to fix the total compensation at Rs.6,53,000/- with 9% interest from the date of filing of the petition till the date of realization. Challenging the said award, the present appeal has been filed



C.M.A(MD)No.855 of 2018

by the Transport Corporation.

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4. According to the learned Counsel appearing for the Transport Corporation, when the respondents 1 and 2, namely, the Transport Corporation as well as the owner of the offending two-wheeler have been held jointly and severally liable, the Transport Corporation ought not to have been directed to deposit the entire award amount. They should have been mulcted with only 50% of liability. He further contended that, for loss of consortium, a sum of Rs.1,00,000/- has been awarded to the first claimant, who is the husband and another sum of Rs.40,000/- has been awarded towards loss of love and affection towards the other claimants, who are the children of the deceased person. He further pointed out that the Tribunal ought not to have awarded 9% interest. Hence, he prayed for allowing the appeal for the reasons stated above.

5. The owner of the offending two-wheeler, namely, the sixth respondent is represented through a Counsel. The matter was called in the morning session and it was passed over due to non appearance on the side of the learned Counsel appearing for the sixth respondent. Even in the afternoon session, there is no representation on the side of the sixth



C.M.A(MD)No.855 of 2018

respondent. Therefore, this Court proceeds to pass the orders based upon the submissions made on the side of the learned Counsel appearing for the appellant.

6. I have carefully considered the submissions made on the side of the appellant and perused the materials available on record.

7. The manner of accident as alleged by the claimant clearly indicates that the rider of the offending two-wheeler as well as the driver of the Transport Corporation are both equally responsible for the accident. The Tribunal has arrived at a specific finding that there is composite negligence on the part of both the drivers. When there is composite negligence, the option is always open to the claimants to execute the award as against any one of the tort-feasors to claim the entire award amount. One of the tort-feasors, who had paid the entire amount is at liberty to recover the balance amount from the other tort-feasor.

8. The Hon'ble Supreme Court in a judgment reported in **2015 (9)**



C.M.A(MD)No.855 of 2018

SCC 273 [Khenyei Vs. New India Assurance Company Limited and

Others] in paragraph No.18 has held as follows:

"18.

(i) *In the case of composite negligence, plaintiff / claimant is entitled to sue both or any one of the joint tort feors and to recover the entire compensation as liability of joint tort feors is joint and several.*

(ii) *In the case of composite negligence, apportionment of compensation between two tort feors vis-a-vis the plaintiff / claimant is not permissible. He can recover at his option whole damages from any of them.*

(iii) *In case all the joint tort feors have been impleaded and evidence is sufficient, it is open to the Court / Tribunal to determine inter se extent of composite negligence of the drivers. However, determination of the extent of negligence between the joint tort feors is only for the purpose of their inter se liability so that one may recover the sum from the other after making whole of payment to the plaintiff / claimant to the extent it has satisfied the liability of the other. In case both of them have been impleaded and the apportionment / extent of their negligence has been determined by the Court / Tribunal, in main case one joint tort feor can recover the amount from the other in the execution proceedings.*

(iv) *It would not be appropriate for the Court / Tribunal to determine the extent of composite negligence of*



C.M.A(MD)No.855 of 2018

the drivers of two vehicles in the absence of impleadment of other joint tortfeasors. In such a case, impleaded joint tortfeasor should be left, in case he so desires, to sue the other joint tortfeasor in independent proceedings after passing of the decree or award."

9. In view of the judgment of the Hon'ble Supreme Court, it is clear that, the claimant is at liberty to recover the award amount from anyone of the tort-feasors.

10. In the present case, both the tort-feasors have been made as parties. After satisfying the award, with regard to the 100% of the award amount, the Transport Corporation is always at liberty to recover the 50% from the other tort-feasor, namely, the second respondent in the claim petition. Therefore, the order of pay and recovery passed by the Tribunal cannot be found fault with.

11. The learned Counsel appearing for the appellant had further contended that the Tribunal ought not to have awarded Rs.1,40,000/- towards loss of consortium. This Court is of the view that there are five claimants and each one of them would be entitled to Rs.40,000/- towards



C.M.A(MD)No.855 of 2018

loss of consortium and that would amount to Rs.2,00,000/-. However, the Tribunal has awarded only Rs.1,40,000/-. Therefore, This Court is not inclined to interfere in the award of compensation under the heads of loss of consortium or loss of love and affection.

12. It is the further contention of the learned Counsel appearing for the appellant that, the Tribunal ought not to have awarded 9% interest considering the fact that the accident has taken place in the year 2015. This Court is in agreement with the said submission and the percentage of interest is reduced from 9% to 7.5%.

13. In view of the above said deliberations, the award of the Tribunal is modified to the effect that the rate of interest is reduced from 9% to 7.5%. In other respects, the award of the Tribunal gets confirmed.

14. This Civil Miscellaneous Appeal stands partly allowed to the extent as stated above. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

24.04.2024



C.M.A(MD)No.855 of 2018

NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR

To

- 1.The Motor Accident Claims Tribunal,
Special District Court,
Thanjavur.
- 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.M.A(MD)No.855 of 2018

R.VIJAYAKUMAR, J.

BTR

Judgment made in
C.M.A(MD)No.855 of 2018

24.04.2024