

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2015

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THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.2808 of 2015

The Managing Director
Tamil Nadu State Transport
Corporation Limited
Villupuram

... Appellant/Respondent

-Vs-

1. Fathima
W/o Shajakhan
2. Shakir Ahamad
S/o Shajakhan
3. Shahidha
D/o Shajakhan

... Respondents/Petitioners

Memorandum of Grounds of Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 2.6.2014 made in M.C.O.P.No.121 of 2013 on the file of the Motor Accidents Claims Tribunal, Special District Judge, Villupuram.

For Appellant : Mr.K.J.Sivakumar

JUDGMENT

This civil miscellaneous appeal has been directed against the impugned judgment and decree dated 2.6.2014, in and by which the Motor Accidents Claims Tribunal has awarded a sum of Rs.5,21,000/- as against the claim of Rs.10,00,000/- for the loss of life of 22 years old Shabir Ahamed, a Sweet Master, on the ground that the Tribunal has committed a serious error in accepting the evidence of P.W.1, who is the mother of the deceased, when she was not an eye-witness to the occurrence of the accident. Adding further, the learned counsel submitted that the Tribunal, merely considering the registration of the First Information Report against the driver of the vehicle belonging to the appellant, has directly found him guilty on the negligence aspect. Yet another grievance of the appellant, he pleaded, is that the Tribunal has failed to consider the evidence of P.W.2, who is the eye-witness to the occurrence. When the appellant has produced sufficient evidence that after

dropping the passengers at Elavanasoorkottai bus stop and further proceeding on the branch road of Tirukoilur, the deceased wrongly came running and tried to get into the moving bus, as a result of which he fell down and the accident was only due to the act of the deceased, the Tribunal, without mentioning anything on this aspect, has wrongly passed the award finding fault with the driver of the vehicle. Hence the impugned award is liable to be interfered with, he pleaded.

2. This Court finds no merit in any of the contentions made by the learned counsel for the appellant. The reason is that the contention that the deceased was solely responsible for the accident because of his contributory negligence has been properly analyzed by the Tribunal on the basis of the evidence of R.W.1 himself, inasmuch as R.W.1, during his cross examination, had deposed that while taking the bus he did not see the left side mirror when the deceased got into the bus. Moreover, R.W.1 also put the blame on his conductor stating that the conductor did not give any instruction to stop the vehicle. On the other hand, a perusal of Ex.P1-FIR reveals that when the deceased tried to get into the bus at the Elavanasoorkottai bus stop, the driver took the bus rashly and negligently and thereupon caused the accident. The evidence of the claimants recorded by the Tribunal shows that the deceased got into the bus only at Elavanasoorkottai bus stop and not as alleged by R.W.1. On this basis, the Tribunal has come to the conclusion that the claimants have proved that the accident was due to the rash and negligent driving of the driver of the bus bearing Registration No.TN-32-N-3259 belonging to the appellant. Therefore, on the question of negligence, when the Tribunal has considered the case of the appellant and fixed the notional monthly income of the deceased at Rs.4,500/- rejecting the claim of Rs.8,000/- as the monthly income, this Court is not able to find fault with the fixation of notional monthly income. Again this Court is not able to find fault with the formula adopted by the Tribunal for arriving at the total compensation, inasmuch as out of the notional monthly income of Rs.4,500/-, 50% thereof was deducted towards the personal and living expenses of the deceased and the balance 50% has been taken to be his contribution to the family. On this score, while taking the monthly contribution at Rs.2,250/- and the yearly contribution at Rs.27,000/-, since the deceased being a bachelor was aged 22 years on the date of accident, adopting the multiplier of 18, the Tribunal calculated the total dependancy at $\text{Rs.27,000} \times 18 = \text{Rs.4,86,000/-}$, which is absolutely in order and no interference is called for on this aspect. However, with regard to the loss of love and affection, following the conservative approach, a sum of Rs.30,000/- has been awarded at the rate of Rs.10,000/- for each of the claimants apart from Rs.5,000/- towards funeral expenses by the Tribunal, thus totalling a sum of Rs.5,21,000/- with 7.5% interest per annum from the date of petition till the date of deposit. The Tribunal has also apportioned the total sum

to the three claimants, namely, a sum of Rs.3,21,000/- to the mother and a sum of Rs.1,00,000/- each to the sister and brother of the deceased. Therefore, looking at the case of the appellant, this Court does not find any merits in the appeal, since the impugned award is in order. Accordingly, the civil miscellaneous appeal is dismissed at the admission stage. Consequently, M.P.No.1 of 2015 is also dismissed. No costs. The appellant is directed to deposit the entire award amount together with interest, except the statutory amount of Rs.25,000/- deposited already, to the credit of the M.C.O.P.No.121 of 2013 before the Motor Accidents Claims Tribunal, Special District Judge, Villupuram within a period of four weeks from the date of receipt of a copy of this order to enable the claimants to withdraw the same by moving appropriate application before the Tribunal.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal
Special District Judge (MCOP cases)
Villupuram

C.M.A.No.2808 of 2015

CA(CO)
CA(28/01/2016)

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