



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.07.2015

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

CMA. (MD) No.788 of 2015

and

M.P (MD) No.3 of 2015

The Managing Director,
Tamil Nadu State Transport
Corporation (Madurai) Ltd.,
Bye Pass Road,
Madurai.

:Appellant/Respondent

Vs.

1.P.Arumugam
2.A.Alagumathi

: Respondents/Petitioners

Appeal filed under Section 173 of Motor Vehicles Act 1988, against the award dated 15.12.2012 made in M.C.O.P.No.2096 of 2009 on the file of Motor Accident Claims Tribunal, District & Sessions Judge (CCC) Madurai.

For Appellant

: Mr.Kayalarasan

JUDGMENT

The Civil Miscellaneous Appeal is filed against the order, dated 15.12.2012, made in M.C.O.P.No.2096 of 2009, awarding compensation of Rs.3,05,000/-. The appellant is the respondent in M.C.O.P.No.2096 of 2009.

2.The respondents filed a claim petition claiming compensation of Rs.4,00,000/-, for the death of their minor child, in the accident, that occurred on 04.08.2009, due to rash and negligent driving by driver of the bus belonging to the appellant. The Tribunal awarded a sum of Rs.3,05,000/-, as compensation to the respondents. Aggrieved against the said award, the appellant has filed the present appeal.

3.According to the respondents on 04.08.2009 at about 04.45 p.m., the daughter of the respondents minor Tamilarasi, after the school hours, was waiting in the bus stand, to come to home. She was getting into bus, belonging to the appellant, through back entrance. At that time, the driver of the bus, started the bus at a high speed, in a rash and negligent manner. The said Tamilarasi, the daughter of the respondents fell down and sustained injuries. She died, inspite of the medical treatment, due to the injuries suffered by her. The minor daughter was aged about 11 years at the time of accident and according to the respondents, she was an intelligent and active girl. Therefore, they claimed a sum of Rs.4,00,000/- as compensation from the appellant.

4.The appellant Corporation filed counter statement denying the allegations that the deceased died due to rash and negligent driving



by driver of the bus, belonging to the appellant. According to the appellant, the driver of the bus drove the vehicle carefully in a moderate speed. There was heavy rush in the bus stand, number of school children were getting in and getting down in the said bus stand. Due to heavy rush, some of the students have pushed the deceased from the bus and she died, due to the injuries sustained by her and prayed for dismissal of the claim petition, as the accident did not occur due to rash and negligent driving by driver of the bus, belonging to the appellant.

5. Before the Tribunal, the first respondent was examined as P.W.1 and one Thamaraikani, who is an eye witness to the occurrence, was examined as P.W.2 and marked 9 documents as Ex.P1 to Ex.P.9. The appellant examined the driver of the bus as R.W.1 and did not mark any documents.

6. The Tribunal, considering the pleadings and evidence of eye witness P.W.2, came to the conclusion that the accident occurred only due to rash and negligent driving by driver of the bus, belonging to the appellant. The Tribunal considering the judgment reported in 2009(1) TNMAC 593 (SC) *R.K.Malik and Another Vs.Kiran Pal* and others, awarded a sum of Rs.3,05,000/-, as compensation. Aggrieved against the said order of the Tribunal, the appellant filed the present appeal.

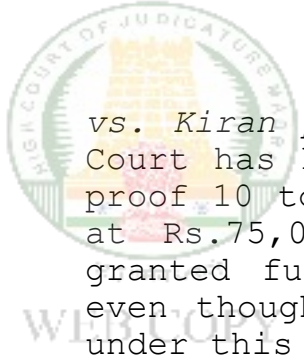
7. The learned counsel for the appellant contended that:-

- i) The accident did not occur due to rash and negligent driving of the driver of the bus belonging to the appellant. The accident took place only due to negligence of the deceased.
- ii) The reasons given by the Tribunal for rejecting the evidence of R.W.1 driver of the bus, is not correct.
- iii) The Tribunal is not correct in granting compensation of Rs.75,000/- each for non-pecuniary loss of future prospects and the compensation awarded, is excessive.

8. I have carefully perused the materials on record and considering the arguments of the learned counsel for the appellant.

9. The Tribunal has accepted the evidence of P.W.2, eye witness and rejected the evidence of R.W.1, driver of the bus. The said conclusion is correct as the FIR was lodged only against the driver of the bus, R.W.1. Further, the version of R.W.1 that due to heavy rush in the bus, some of the students pushed the deceased from the bus and the deceased fell down and sustained injury only due to her carelessness, is not believable. Therefore, the finding of the Tribunal that the accident took place only due to rash and negligent driving by driver of the bus belonging to the appellant, is proper and valid.

10. As far as quantum of compensation is concerned, the Tribunal has applied the ratio laid down in the Judgement of the Hon'ble Apex Court in 2009(1) TNMAC 593 (SC) [*R.K.Malik and another*]



vs. Kiran pal and others]. In the said judgment, the Hon'ble Apex Court has held that pecuniary loss for the death caused in the age group 10 to 15 years, is at Rs.1,50,000/- and non-pecuniary loss is at Rs.75,000/-. In the said judgment, the Hon'ble Apex Court granted further sum of Rs.75,000/- for loss of future prospects, even though, the Tribunal and High Court did not grant any amount under this Head.

11. In view of this fact, Tribunal arrived at compensation as per Judgment referred to above. The order of the Tribunal is valid and correct. In the circumstances, there is no reason or circumstances warranting interference by this Court. Hence, the Civil Miscellaneous Appeal is dismissed. No costs.

Sd/-

Assistant Registrar (Writs)

/True Copy/

Sub-Assistant Registrar

To

The Motor Accident Claims Tribunal,
District & Sessions Judge , .
(Court for trial of cases relating to communal Clashes)
Madurai

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RL/2 c- 26/8/2015

CMA. (MD) No.788 of 2015