

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 19.09.2016

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THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A. No.1931 of 2016
& C.M.P.No.14055 of 2016

The Divisional Manager,
Tamil Nadu State Transport Corporation Limited,
Villupuram.

.. Appellant

Versus

1.Dhanapal
2.Manimegalai

.. Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 29.10.2015 made in M.C.O.P.No.303/2014 on the file of the Motor Accidents Claims Tribunal, (III Additional District and Sessions Judge), Cuddalore at Vridhachalam.

For Appellant : Mr.S.Sairaman

J U D G M E N T

The Divisional Manager of Tamil Nadu State Transport Corporation has filed the present Civil Miscellaneous Appeal, challenging the correctness of the impugned award dated 29.10.2015 made in M.C.O.P.No.303/2014 on the file of the Motor Accidents Claims Tribunal, (III Additional District and Sessions

Judge), Cuddalore at Vridhachalam.

2.The case of the claimants is that on 30.08.2014 at about 06.00 p.m., when the deceased Anbarasan was proceeding in the motor cycle, bearing Registration No.TN-31-AD-3318, which was driven by one Nagarajan, as pillion rider, on the Vridhachalam Junction Road, a bus bearing Registration No.TN.32-N-3956, came in a rash and negligent manner and hit against the motor cycle and thereby caused the death of the deceased. According to the claimants, the accident was happened only due to rash and negligent driving of the appellant's bus driver.

3.Learned counsel appearing for the appellant, questioning the finding, wrongly fixing the negligence on the part of the driver of the bus belonging to the appellant/Transport Corporation, would submit that when the interesting witnesses from the claimants' side, were produced, the learned Tribunal without any hesitation, has accepted their evidence in respect of negligence aspect for the purpose of giving higher compensation and such an approach is totally un-tenable. He would further submit that moreover when F.I.R. was registered on the file of Virudhachalam Town Police Station in Crime No.474 of 2014 against the driver of the bus, said to have caused the accident, without examining any of the police officer, belonging to the said Police Station, the

learned Tribunal has wrongly come to the conclusion that there was a negligence on the part of the driver of the appellant/Transport Corporation. Adding further, he would submit that when two vehicles involved in the accident namely Motor Cycle and the bus belonging to the appellant/Transport Corporation, the owner of the Motor Vehicle or its insurer has to be impleaded as a party in the proceeding, but the same has not been done and ignoring the same, the learned Tribunal has passed the said impugned award. Learned counsel for the appellant further submitted that the learned Tribunal has also failed to apply the principles of contributory negligence and the entire liability has been fixed on the appellant, which is wholly unsustainable. Therefore, the impugned award passed by the learned Tribunal is liable to be interfered.

4. But this Court is not able to find any merit in the appeal. The reason is that although the learned counsel for the appellant submitted that the findings of the learned Tribunal in respect of negligence aspect is contrary to the evidence of records and it has failed to apply the principles of contributory negligence and the entire liability has been fixed on the appellant, I am of the considered view that the learned Tribunal has gone into the question of negligence and arrived at the conclusion that the rash and negligent driving of the driver of the appellant/Transport Corporation is let to the accident in

causing the death of the deceased Anbarasan, on the basis of the registration of F.I.R. dated 31.08.2014, marked as Ex.P1 and the copy of the Post Mortem Certificate dated 31.08.2014, marked as Ex.P2 and in addition thereto a report dated 01.09.2014 marked as Ex.P3, submitted by the Motor Vehicle Inspector. Learned Tribunal, after going through the registration of F.I.R. holding that the driver of the bus belonging to the Transport Corporation is an offending party, disbelieving the evidence of the driver, who was examined as R.W.1 for the reason that R.W.1 in his evidence, has categorically admitted that F.I.R. was registered against him and the police also laid charge sheet after completion of investigation and the case is pending in C.C. No. 153 of 2014, finding fault with R.W.1, who was not chosen to give any complaint with regard to non receipt of the complaint lodged by him and also considering the Motor Vehicle Report, marked as Ex.P3, which shows that the accident was occurred not due to any mechanical defect, but, due to the rash and negligent driving on the part of the driver, belonging to the Transport Corporation, has rightly come to the conclusion that there was rash and negligence on the part of the driver of the Transport Corporation. Finally, since the offending driver of the Transport Corporation was found responsible for causing the accident, which has taken away the life of Anbarasan, who was the bread winner of the claimants' family, has rightly fixed vicarious liability on the Transport Corporation. Hence, this

Court is not able to find any infirmity in the conclusion reached on the question of negligence and liability.

5. However, with regard to the quantum of compensation as mentioned above, since the deceased was working as Electrician and projected as earning a sum of Rs.15,000/- per month, the learned Tribunal, finding that there was no proof of income, keeping in mind that the deceased was aged about 20 years at the time of accident and accepting the occupation carried on by the deceased, has fixed a sum of Rs.6,000/- as notional monthly income. While doing so, applying the ratio laid by the Hon'ble Apex Court in the case of Sarla Verma, after deducting 50% of the income towards his personal expenses, as he was a bachelor and rightly applying the ratio laid down by the Hon'ble Apex Court in the case of **Rajeh vs. Rajbik Singh reported in 2013 (2) TNMAC page 55**, fixing 50% of the income towards future prospects, has rightly worked out Rs.9,000/- as his monthly income namely Rs.6,000/- + Rs.3,000/-. However, with regard to the head 'loss of love and affection', only a meagre amount of Rs.25,000/- each has been fixed by the learned Tribunal. Therefore, this Court is not inclined to find any infirmity in the impugned award. Accordingly, the award is confirmed and the appeal is dismissed. No costs. Consequently,

Connected miscellaneous petition is closed.

6. Since the learned counsel for the appellant submitted that the appellant had deposited a sum of Rs.25,000/- towards statutory deposit, the balance amount is directed to be deposited within a period of four weeks from

T.RAJA, J.

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the date of receipt of a copy of this order. On such deposit, it is for the claimants to move a petition before the Tribunal for withdrawing the said amount.

19.09.2016

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To

- 1.The Motor Accidents Claims Tribunal,
(III Additional District and Sessions Judge),
Cuddalore at Vridhachalam.
- 2.The Section Officer,
V.R.Section,
High Court, Madras.

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