

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.08.2017

CORAM:

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

C.M.A.No.297 of 2014

and

M.P.No.1 of 2014

The Managing Director
Tamil Nadu State Transport
Corporation, Salem. Appellant/Respondent

Vs.

1.Parvathy
2.Venkatesan
3.Sekar
4.Velu Respondents/Petitioners

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 29.11.2012 made in M.C.O.P.No.165 of 2012 on the file of the Motor Accident Claims Tribunal, III Additional District and Sessions Judge, Kallakurichi.

For Appellant : Mr.D.Venkatachalam

For Respondents : No Appearance

JUDGMENT

This appeal is preferred by the State Transport Corporation whose bus was alleged by the claimant to have been driven rashly and negligently when it collided against a Tata Indica car, lost control totally thereafter and crushed against a parapet wall of a bridge, and fell into a river beneath. In the said accident, one Solai, a passenger of the bus, was injured and he died some eight months later. Consequent to his death his widow and three children preferred a Claim seeking a compensation of Rs.10,00,000/-, as against which the Tribunal has passed an award for Rs.4,15,000/- and directed to pay the same with interest at the rate of 7.5% per annum. Challenging both the factum of alleged and quantum of compensation awarded by the Tribunal, the present appeal is preferred.

2. None of the respondents have entered appearance.

3. In its counter, it was contended by the appellant that the accident was not occasioned by the alleged negligence of its driver Shivakumar, but due to reckless driving of Tata Indica car, that the accident occurred when the bus attempted to avoid the car that came from the opposite direction. This fact was also repeated by the driver of the vehicle when he examined himself as RW1. Except the self-serving testimony of RW1, there is no other independent material to corroborate that the driver of the bus actually attempted to avoid a collision with a car that led to the accident.

4. The learned counsel for the appellant however intervened to state that only the driver of the bus alone would be in a position to speak about what precisely happened at the very moment of accident as except him none would have been in contemplation of an impending accident, and therefore, the testimony of RW1 cannot be rejected without scrutiny. The learned counsel also argued that except Ext.P-3 discharge summary, there is nothing available on record to indicate that the ultimate death of victim of the accident had no direct nexus to the injuries he suffered in the accident. He also added that the Tribunal was wrong in the choice of multiplier of 8.

5. All the claimants except the 2nd respondent have been served. However, for the decision which this Court has taken and to be delineated in the paragraphs to follow, this Court dispenses with notice to the 2nd respondent.

6. When an accident involving two vehicles take place, especially between those vehicles coming from the opposite direction, as rightly contended by the counsel for the appellant, the driver would be the best witness to speak about what precisely had happened at the very moment of the accident. However, so far as the present case is concerned, the fact remains that the bus in question had not just hit the car but also crashed on to the parapet wall of a bridge and fell into the river, which implies that the driver of the bus was driving the bus at a speed that he could not control it at the moment of accident. Duty to care that a driver shall possess and display essentially is defined by his ability to anticipate an accident at any moment of the journey. It is here, this Court considers that the driver of the bus had lost a few points. Consequently this Court does not find any material to interfere with the finding of the Tribunal on the point of negligence.

7. The second point canvassed by the counsel is that the death was not instantaneous or very proximate to the time of accident since the victim had died some eight months after the accident. However, in dealing with this aspect the Tribunal has essentially relied on Ext.P-3 discharge summary to conclude that there indeed existed a proximity between the injury suffered and the death ensued. At any rate, no

material was brought to the notice of this Court to indicate a possible intervention of any supervening cause, independent of the injuries suffered, to conclude that the death of the victim might not have an association to the injuries he suffered. This implies that the appellant failed on this point too.

8. Turning to the quantum of compensation awarded, even though the claimants have contended that the deceased was earning around Rs.20,000/- per month, the Tribunal reckoned at Rs.3,000/- p.m., and after deducting $\frac{1}{4}$ towards personal expenses of the victim, applied a multiplier 8 and arrived at Rs.2,16,000/- towards loss of dependency. I consider this just and reasonable.

9. I therefore, find that the award as passed by the Tribunal is in order. In the result, I do not find any merit in this appeal and the same is liable to be dismissed. Accordingly, this Civil Miscellaneous Appeal is dismissed and the award of the Tribunal is confirmed. The Appellant/Transport Corporation is directed to pay the entire award of compensation along with accrued interest, less if any amount already deposited, within a period of six weeks from the date of receipt of a copy of this order, whereupon the claimants are entitled to withdraw the same forthwith. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

ssn

To:

- 1.The Motor Accident Claims Tribunal
III Additional District and Sessions Judge,
Kallakurichi.
- 2.The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.D.Venkatachalam, Advocate, S.R.No.55067

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