

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.04.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A No.32 of 2010

in

M.P. No.1 of 2010

The Branch Manager,
Tamil Nadu State Transport Corporation,
12, Ramakrishna Road,
Salem-7.

... Appellant

Vs.

1.Lakshmi
2.Raja
3.Rani

... Respondents

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the fair and decreetal order, dated 29.04.2009 made in M.C.O.P.No.268 of 2008, on the file of Motor Accidents Claims Tribunal (Sub Court) Thiruchengodu and praying to set aside the same.

For Appellant : Mr.D.Venkatachalam

For Respondents : Mr.C.Kulanthaivel

JUDGMENT

The appellant is the respondent in M.C.O.P.No.268 of 2008 and the respondents herein, who are the claimants have filed the above said MCOP on the file of the Sub Court, Thiruchengodu,

claiming a sum of Rs.5,00,000/- as compensation for the death of one Rangasamy, who was the husband of the first respondent and the father of respondents 2 and 3.

2.According to the respondents, on 03.06.2004, when the deceased Rangasamy was travelling as pillion rider in TVS 50 bearing Registration No.TN 28 W 4078 along with the rider of the vehicle T.S.Duraisamy, on the left side road from Tiruchengodu to Sankari at Pattaraimeadu, a TNSTC bus bearing Registration No.TN 27 N 0977 coming from the back side of TVS 50, driven by its driver in a rash and negligent manner, dashed against TVS 50 and caused accident. In the said accident, the said Rangasamy, who was pillion rider sustained serious head injuries and he was admitted in the Government Hospital, Tiruchengodu and subsequently, he was admitted in Government Hospital, Erode, BSG Hospital and CMC Hospital, Coimbatore and in spite of medical treatment, he died in CMC Hospital, Coimbatore. The First Information Report has been registered against the driver of the bus belonging to the appellant.

3.According to the respondents 1 to 3, the accident had

occurred only due to the rash and negligent driving of the driver of the bus belonging to the appellant. At the time of accident, the deceased was 56 years old and was working in the Mill and earning a sum of Rs.10,000/- p.m. The respondents, being dependents and legal heirs of the deceased, have filed the MCOP claiming a sum of Rs.5 lakhs as compensation for the death of the said Rangasamy.

4.The appellant herein has filed a counter statement in MCOP and denied all the averments made by the respondents. According to the appellant, on the date of accident, the driver of the bus bearing Registration No.TN-27/N 0977 stopped the vehicle at Pattarai Medu and the passengers were getting down from the bus, at that time, the rider of TVS 50 along with deceased Rangasamy without following traffic rules came in a rash and negligent manner and dashed against the bus and caused the accident. The claimants have not proved that they are the legal heirs and also the age and income of the deceased. In any event, the compensation awarded by the Tribunal is excessive and prayed for dismissal of the claim petition.

5.Before the Tribunal, the first respondent examined herself

as P.W.1 and eye witness was examined as P.W.2 and 6 documents were marked as Ex.P.1 to P.6. On the side of the appellant, the Conductor of the bus was examined as R.W.1 and no documents were marked.

6.The Tribunal, after considering the pleadings, oral and documentary evidence came to the conclusion that the appellant was responsible for the said accident and rejected the evidence of RW1 since there were contradictory version in his chief examination and cross examination and held that the accident took place only due to the rash and negligent driving of the driver of the bus belonging to the appellant Corporation and awarded a sum of Rs.4,93,000/-, as compensation to the respondents/claimants.

7.Aggrieved against the award of the Tribunal, the appellant/Transport Corporation has filed the present Civil Miscellaneous Appeal.

8.The learned counsel for the appellant submitted that the Tribunal failed to consider the evidence of RW1 that the rider of TVS 50 only overtook the bus, dashed against the same and caused

the accident. The driver of the bus belonging to the appellant is not responsible for the accident. The respondents herein have not produced any documentary evidence to substantiate the income of the deceased. In these circumstances, the amount of Rs.4,500/- p.m. fixed by the Tribunal as income of the deceased, is excessive and the Tribunal has also applied multiplier. The amount awarded under other heads are also excessive.

9.The learned counsel for the respondents 1 to 3 submitted that the respondents have examined PW2-rider of the TVS 50 and proved that the accident took place only due to rash and negligent driving by the driver of the bus belonging to the appellant Corporation. The driver of the bus was not examined and only the Conductor of the bus was examined. RW1-Conductor has admitted in his cross examination that he did not see the accident. Hence, the respondents prayed for dismissal of the appeal.

10. I have heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondents and perused all the materials available on record.

11. The learned counsel for the appellant contended that the accident was caused by rider of TVS 50 as he overtook and dashed against the bus belonging to the appellant. However, the appellant has not substantiated the said contention. The appellant did not examine the driver of the bus and examined only the conductor of the bus. RW1-Conductor has admitted in his cross examination that he did not see the accident and the FIR was lodged only against the driver of the bus. The Tribunal has rightly rejected the evidence of RW1 and I do not find any error in the reasoning of the Tribunal.

12.As far as the quantum of compensation is concerned, in the absence of any proof with regard to the age of the deceased, the Tribunal has fixed Rs.4,500/- and taking into consideration the age of the deceased, the Tribunal adopted correct multiplier '8' as per Schedule II of the Motor Vehicles Act and awarded a sum of Rs.4,32,000/- as loss of income. The Tribunal has also awarded a sum of Rs.2,00,000/- to the respondents towards loss of love and affection and a sum of Rs.5,000/- towards funeral expenses which are just and reasonable compensation and the same are hereby

confirmed.

13. In the above circumstances, this Court is not inclined to interfere with the impugned award passed by the Tribunal. Accordingly, the award passed by the Tribunal is hereby confirmed and the appeal is dismissed. No costs. Consequently, connected miscellaneous petition is dismissed. It is seen that pursuant to the order dated 12.01.2010, the appellant / Transport Corporation had deposited the entire award amount along with interest and costs and the respondents/claimants have already been withdrawn 50% of the deposited amount. Hence, the respondents/claimants are permitted to withdraw their share of balance award amount along with interest and cost, by filing proper application.

04.04.2017

Index : Yes/No

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To

1. The Motor Accidents Claims Tribunal,
(Sub Court) Thiruchengodu

2. The Section Officer,
V.R. Section, High Court, Madras.

V.M.VELUMANI,J.

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