

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 28.08.2018

CORAM:
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Civil Miscellaneous Appeal No.1947 of 2016
and
CMP.No.14162 of 2016

The Managing Director
Tamil Nadu State Transport Corporation Limited,
Railway Station Road,
Kumbakonam Kotam-1. ... Appellant/Respondent

Vs.

1.Srikanth

2.Minor Sarves
rep. by his father and guardian
1st respondent ... Respondents/Petitioner

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the decree and judgment dated 14.09.2012 passed in M.C.O.P.No.11 of 2009 by the Motor Accidents Claims Tribunal (District and Sessions Judge), Tiruvarur.

For Appellant : Mr.D.Venkatachalam

JUDGMENT

Impugning the decree and judgment dated 14.09.2012 passed in M.C.O.P.No.11 of 2009 by the Motor Accidents Claims Tribunal (District and Sessions Court), Tiruvarur, the present appeal is filed.

2. The facts leading to the filing of this appeal are narrated infra. The respondents herein filed the claim petition before the Tribunal alleging that on 21.10.2008, the deceased Kalaivani and the mother of the first respondent was travelling in the bus bearing registration No.TN-49 N 1451 owned by the appellant from Kamalapuram to purchase clothes for Deepavali festival. When the driver of the bus turned the bus in a rash and negligent manner in the curve of VGP at Ottanachiarkudy, the deceased Kalaivani thrown away from the bus and sustained head injury. Immediately, she was taken to Tiruvarur Government Hospital for treatment and the Doctor on an examination declared that she died. Regarding the accident, a criminal case in Crime No.318 of 2008 was registered by Kodaracherry Police Station

against the driver of the appellant's bus. At the time of accident, the deceased was aged 25 years and was earning Rs.6,500/- per month by working as Typist cum Accountant. Stating that the accident occurred due to rash and negligent driving of the driver of the appellant's bus, the respondents, who are husband and minor son have filed the claim petition.

3. The appellant denied the allegations in the claim petition and filed counter contending that the enquiry report reveals that the deceased Kalaivani without observing the traffic rules and without holding the safety rod, speaking in a cell phone when the bus turned in a curve slowly. Due to the negligence of the deceased who is not holding the safety rod fall down through the front door and invited the accident. Therefore, no negligence can be attributed on the driver of the appellant's bus. In the counter, the appellant also denied the age, occupation and monthly income of the deceased and that the compensation claimed by the respondents is highly excessive.

4. Before the Tribunal, the respondents have examined three witnesses and marked Exs.P1 to P6. On the side of the appellant, two witnesses were examined and no document was marked.

5. The learned Tribunal, by decree and judgment dated 14.9.2012 passed in M.C.O.P.No.11 of 2009, awarded total compensation of Rs.6,90,000/-.

6. Assailing the same, the present appeal is filed by the appellant - Transport Corporation.

7. The learned counsel appearing for the appellant contended that the Tribunal fails to note that if the accident occurred due to rash and negligence of the appellant's driver other than the deceased some other passengers also might have fallen down. As the deceased alone has fallen down from the bus, which clearly shows that the accident happened due to the negligence of the deceased. The learned counsel further submitted that the award passed by the Tribunal is very high and prayed for setting aside the same.

8. Per contra, the learned counsel appearing for the respondents reiterated the reasons that weighed with the Tribunal and prayed for dismissal of this appeal.

9. I heard Mr.D.Venkatachalam, learned counsel for the appellant and perused the documents available on record.

10. It is not necessary to narrate the entire facts such as, as to how the accident had occurred and who is responsible for the accident and who is liable to pay compensation. It is for

the reasons that the Tribunal has recorded findings on these facts in favour of the respondents/claimants. Secondly, the above aspects are not under serious challenge by the appellant. Moreover, the evidence of P.W.2 and Ex.P1-FIR clearly establish that the accident occurred due to the rash and negligent driving of the driver of the appellant's bus driver.

11. Now the only point to be considered in this appeal is whether the compensation of Rs.6,90,000/- awarded by the Tribunal is reasonable.

12. In his evidence, P.W.1 deposed that at the time of accident the deceased Kalaivani completed B.Com degree and had also passed typewriting junior grade. She was working as Typist-cum-Accountant in Tiruvarur Gopuram Agencies at the time of accident. He further deposed that the deceased was getting salary of Rs.6,500/- per month and produced Ex.P6-pay certificate. The evidence of P.W.1 was strengthened by the oral evidence of P.W.3, who is the employer of the deceased.

13. Considering the qualification of the deceased and the avocation, the Tribunal had fixed the annual income of the deceased at Rs.60,000/- and after deducting one-third towards her personal expenses, the Tribunal has taken the annual income at Rs.40,000/-, which in my considered view is reasonable and there is no error committed by the Tribunal in fixing the annual income of the deceased.

14. Adopting multiplier 17, the Tribunal calculated the loss of dependency at Rs.6,80,000/-, which in my considered view is reasonable.

15. Adding conventional damages i.e., Rs.5,000/- for loss of love and affection, Rs.2,000/- for transport charges and Rs.3,000/- for funeral expenses, the Tribunal awarded total compensation of Rs.6,90,000/-. Since the total compensation of Rs.6,90,000/- awarded by the Tribunal is just and reasonable, there is no need to interfere with the award passed by the Tribunal and the same is confirmed.

16. In the result, the Civil Miscellaneous Appeal is dismissed and the award dated 14.09.2012 passed in M.C.O.P.No.11 of 2009 by the Motor Accidents Claims Tribunal (District and Sessions Judge), Tiruvarur is confirmed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

vs

To

The Motor Accidents Claims Tribunal,
District and Sessions Judge
Tiruvavarur.

+1cc to D.Venkatachalam, Advocate, S.R.No.58744.

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SSI (CO)

rrs 18/02/2019



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