

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.364 of 2018
and C.M.P.No.3498 of 2018

The Managing Director
Tamil Nadu State Transport
Corporation Limited,
Nagapattinam

..Appellant/Respondent.

Vs

Kathiruvolu (Died)
1.Subbalakshmi
2.Kalaivani

..Respondents/Petitioners

Civil Miscellaneous Appeal filed under section 173 of Motor Vehicle Act, 1988 against the Judgment and decree dated 30.01.2017 made in M.C.O.P.No.424 of 2016 on the file of the Motor Accident Claims Tribunal, The Special Subordinate Judge, Tiruvannamalai.

For appellant : : Mr.D.Venkatachalam

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the respondent before the Tribunal viz., Tamil Nadu State Transport Corporation Limited, challenging the judgment and decree dated 30.01.2017 made in M.C.O.P.No.424 of 2016 on the file of the Motor Accident Claims Tribunal, the Special Subordinate Judge, Tiruvannamalai.

2.1. For convenience sake, the parties are referred to hereunder according to their litigative status before the Tribunal. The case of the Petitioners is that on 23.07.1998, at about 9 p.m., while the deceased Ellammal was travelling from Thiruvannamalai to Chennai, as the bus stopped at Thozhupedu Village, the deceased Ellammal got down from the bus to attend nature's call and while standing near the bus, the respondent-Tamil Nadu State Transport Corporation bus bearing Reg.No.TN-49-N-0958 came at high speed and dashed against the deceased causing her fatal injuries and in spite of treatment at Government Hospital, Tindivanam, she died.

2.2. According to the Petitioners, who are the legal heirs of the deceased, the accident occurred due to rash and negligent

driving of the respondent-corporation bus only. The deceased was aged 50 years and by working as Agricultural cooly and milk vending business, she was earning Rs.2000/- per month. It is stated that the Petitioners are the dependants of the deceased and sought compensation of Rs.1,00,000/- from the respondent-State Transport Corporation.

3. On the other hand, opposing the petition, by filing counter, the respondent-Transport Corporation disputed the claim of the Petitioners about the manner in which the accident occurred. The age, occupation and income of the deceased as claimed by the Petitioners is also disputed. The respondent-transport corporation bus was on its trip from Chennai to Velanganni and stopped near Thozhuppedu due to Mechanical fault and as the crew of the bus was engaged in arranging a spare bus for the service disrupted passengers, at that time, the deceased suddenly crossed the road to answer the nature's call without noticing the oncoming bus, resulting in the accident. The negligence of the deceased alone caused the accident. Hence the respondent seeks dismissal of the Petition.

4. Before the Tribunal, the Petitioners examined P.W.1 and P.W.2 and produced documents Ex.P.1 to Ex.P.3 to prove their claim. On the side of the respondent/Transport Corporation, the driver of the bus was examined as R.W.1, but no document was produced. The Tribunal, on the basis of available material on record, found the negligence of the respondent bus driver alone caused the accident and awarded a sum of Rs.3,15,348/- as compensation. Aggrieved over the same, the appellant-respondent/State Transport Corporation has come forward with the present appeal, questioning the conclusion of the Tribunal regarding the negligence as well as quantum of award.

5. The learned counsel for the appellant/respondent contends that the Tribunal failed to note that the accident occurred in the year 1998 and as such, no amount ought to have been provided for as Future Prospects to the persons who were not employed with fixed salary. The Tribunal also failed to consider the evidence of R.W.1 driver. The Tribunal ought to have fixed contributory negligence on the part of the deceased as cause for the accident. Merely because FIR is registered against the respondent-bus driver, negligence cannot be fastened on him in the absence of any other acceptable materials produced by the Petitioners. Hence, the appellant counsel seeks to set aside the award passed by the tribunal.

6. As far as negligence is concerned, the Tribunal after considering the oral and documentary evidence available on record, found that the driver of the respondent bus alone caused the accident. The eyewitness to the occurrence who deposed as

P.W.2 clearly stated that the deceased and herself were co-passengers in the bus and as the bus stopped at Thozhupedu, the deceased Ellammal got down and was standing on the extreme left side of the road and at that time, the respondent bus which was coming towards Thindivanam, dashed against the deceased. P.W.2 also stated that the respondent bus came at high speed in a rash and negligent manner resulting in the accident. During cross examination of P.W.2, nothing was elicited to discredit his evidence. It is clear from P.W.2 evidence that she is a co-passenger and not a relative of the deceased. As such, there is absolutely no ground is made out to disbelieve her version. Further the Police have registered Ex.P.1-FIR against the driver of the respondent bus only. This will clearly establish the claim of the Petitioners that the negligence on the part of the respondent bus driver alone caused the accident.

7. Even though the respondent-Transport Corporation examined the bus driver as R.W.1, he stated that the deceased Ellammal suddenly crossed the road without noticing the on-coming bus and thereby invited the accident. However R.W.1 admitted that the Police have a case against him for the case occurrence. Since R.W.1 being naturally interested in protecting himself, his oral evidence cannot be accepted in the absence of any other material to support his claim. In such circumstances, the finding of the Tribunal that the negligence of R.W.1 alone caused the accident appears to be just and proper. There is no error in the finding of the Tribunal in fixing the liability on the respondent/Transport Corporation.

8. The Tribunal, after considering the rival contentions has fixed the notional monthly income of the deceased at Rs.2000/-. For a person aged 50 years carrying on agricultural work and milk vending business, the monthly income of Rs.2000/- fixed by the Tribunal appears to be just and proper. The Tribunal, following the Ruling of Supreme Court reported in 2009 (2) TN MAC 1 (SC) [Smt.Sarla Verma Vs. Delhi Transport Corporation and another] added 30% towards Future Prospects and deducted 1/3rd of the income towards personal expenses of the deceased. As such, this court does not find any error in the manner of fixing the monthly income of the deceased as well as adding 30% towards Future prospects and deduction of 1/3rd towards her personal expenses by the Tribunal. Thus, the quantum of award passed by the Tribunal based on the available evidence on record, appears to be just and fair compensation.

9. In the light of the above said discussion, this court finds no infirmity or irregularity in the order passed by the Tribunal. Therefore, the appellant does not make out any ground to interfere with the award passed by the tribunal and to admit the Civil Miscellaneous Appeal. Hence, the Civil Miscellaneous

Appeal is dismissed at the admission stage itself with the following directions:-

(i) The award granted by the Tribunal is confirmed.

(ii) The award of Rs.3,15,348/- granted by the Tribunal will carry interest at 7.5% per annum from the date of petition till the date of deposit.

(iii) The Insurance Company is directed to deposit the award amount with proportionate interest and cost, within a period of six weeks from the date of receipt of a copy of this order.

(iv) The Petitioners 2 and 3/Respondents 1 and 2 are permitted to withdraw the award amount with accrued interest, by filing necessary application before the Tribunal.

(v) Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

nvsri

To

1. THE MOTOR ACCIDENTS CLAIMS TRIBUNAL,
(THE SPECIAL SUBORDINATE JUDGE, TIRUVANNAMALAI.)

2. THE SECTION OFFICER,
V.R. SECTION, HIGH COURT, MADRAS. (2 copies)

+1cc to Mr.D.VENKATACHALAM, Advocate, S.R.No. 15661

C.M.A.No.364 of 2018

RK(CO)
TR(11/04/2018)

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