

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.636 of 2018
and
C.M.P.No.5743 of 2018

The Managing Director,
Tamil Nadu State Transport,
Corporation Limited,
Kumbakonam

..Appellant/Respondent

Versus

1.Paulraj
2.Dhanam

..Respondents/Petitioners

Prayer: Civil Miscellaneous Appeal filed against the judgment and decree dated 25.04.2016 made in M.C.O.P.No.207 of 2014 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Ariyalur.

For Appellant : Mr.D.Venkatachalam

For Respondents : M/s.Pass Associates for R1 & R2

J U D G M E N T

The Appellant/Transport Corporation has filed this appeal against the judgment and decree dated 25.04.2016 made in M.C.O.P.No.207 of 2014 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Ariyalur.

2. For the sake of convenience, the parties are referred to hereunder according to their litigative status before the Tribunal.

3. The case of the petitioners is that on 07.08.2014, while the deceased was proceeding as a pillion rider in the two wheeler belong to his friend Dheebanraj in the Thanjaore to Kumbakonam main road near Palli Agraharam, the respondent bus bearing Registration No.TN-68-N-0617 came at high speed, dashed against the two wheeler driven by Dheebanraj carrying the deceased Elavarasan as pillion rider, resulting in the death of both the persons. The deceased Elavarasan was aged 21 years and he was earning Rs.10,000/- per month by working as a part time

electrician. He was also studying in the 3rd year EEE Course in a private College at Manali. The petitioners who are the parents of the deceased have lost their only son and suffering due to loss of love and affection of the son. Thus, the petitioners sought for a sum of Rs.20,00,000/- as compensation from the respondents.

4. On the other hand, opposing the claim of the petition, by filing counter, the respondent/Transport Corporation contends that the accident did not occur in the manner alleged by the petitioners. The respondent bus bearing Registration No.TN-68-N-0617 was proceeding at normal speed and as it approached Palli Agraharam, the driver noticed a two wheeler coming in the opposite direction with three persons, on the wrong side on the road and immediately, he applied his break, but the two wheeler came at high speed and the rider lost his control, dashed against the bus, resulting in the accident. It was only due to negligence and rash driving by the rider of the two wheeler, the accident occurred. The respondent bus driver is no way responsible for the accident. The age, avocation and income of the deceased as stated by the petitioners is not correct. The claim of the petitioners is exorbitant. Hence, the respondent/Transport Corporation sought for dismissal of the petition.

5. Before the Tribunal, the petitioners examined P.W.1 and P.W.2 and produced documents Exs.P.1 to P.9 to prove their claim. On the side of the respondent R.W.1 was examined, but no document was produced. The Tribunal, on the basis of available evidence, found that the negligence of the bus driver alone caused the accident, passed an award for a sum of Rs.8,94,000/- in favour of the petitioners. Aggrieved over the said finding of the Tribunal, the respondent/Transport Corporation has come forward with the present appeal.

6. The learned counsel for the respondent/Transport Corporation contends that the Tribunal failed to appreciate the fact that P.W.1 is the father of the deceased and he being interested witness has not spoken the truth. The Tribunal failed to appreciate the fact that mere registering of F.I.R against the bus driver alone will not prove the negligence. The Tribunal failed to appreciate the evidence of R.W.1, who was the driver of the bus, about the manner in which the accident occurred. The rider of the motor cycle alone without noticing the oncoming vehicle suddenly tried to cross the road, resulting in the accident. As such, the negligence of the two wheeler rider alone caused the accident. The age, avocation and income of the deceased as alleged by the petitioners is not correct. The Tribunal erred in accepting the evidence of the petitioners side and awarding a compensation which is on higher side. Thus, the respondent/Transport Corporation seeks to entertain the appeal

and to set aside the award passed by the Tribunal.

7. Per contra, the learned counsel for the petitioners/claimants contends that on the basis of available evidence, the Tribunal has arrived at a just and correct conclusion, fixing the negligence on the part of driver of the respondent/Transport Corporation. The compensation awarded by the Tribunal is just and proper and no ground is made out to interfere with the conclusion arrived at by the Tribunal. Thus, the petitioners/claimants sought for dismissal of the appeal.

8. The 1st petitioner, who deposed as P.W.1 stated about the accident and produced Ex.P.1 - Copy of the F.I.R and the copy of the driving license of the deceased as Ex.P.5. The petitioners examined P.W.2 to prove that the accident occurred only due to negligence of the respondent bus driver. According to the petitioners side evidence, the deceased was proceeding as a pillion rider in the two wheeler by the side of the road and it was only due to negligence of the respondent bus driver, the accident took place. If the claim of the respondent is true, the driver of the bus should have lodged the complaint against the other person, but no such complaint is lodged. The respondent examined the driver of the bus as R.W.1 and he stated that the accident occurred only due to the negligence of the two wheeler rider, but being a interested person his evidence cannot be accepted in the absence of any corroborative material. Thus, on the basis of the petitioners side oral evidence and Ex.P.1 - F.I.R, the Tribunal is justified in concluding that the accident occurred only due to rash and negligent driving by the respondent bus driver. This Court, find no valid ground to interfere with the conclusion arrived at by the Tribunal.

9. The petitioners contend that the deceased was studying in the 3rd year EEE Course and was working as a part time electrician earning Rs.-10,000/- per month. The student transfer certificate as well as identity card was produced as Ex.P.8 and P.9. The Tribunal, on the basis of available evidence fixed the age of the deceased is 21 and the notional income at Rs.8,000/- per month. Since the deceased was a Bachelor, the Tribunal deducted 50% towards personal expenses and as the deceased was aged 21 years as per Ex.P.3 - Post mortem report applied the multiplier '18' to arrive at Rs.8,64,000/- as compensation. The Tribunal also provided for compensation on other heads. Even though the respondent/Transport Corporation contends that the compensation awarded by the Tribunal is on higher side, no ground is made out to justify that contention. The respondent/Transport Corporation is not able to point out under which head the amounts awarded by the Tribunal is on higher side. As such, considering the evidence available on record, this Court is of the view that, the Tribunal on proper

appreciation of the material placed before it, has awarded a just and fair compensation to the petitioners and the same needs no interference.

10. In the result, the order passed by the Tribunal dated 25.04.2016 made in M.C.O.P.No.207 of 2014 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Ariyalur, is confirmed and the appeal is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar(CS IV)

//True copy//

Sub Assistant Registrar

bri

To

1.The Additional District Judge,
Ariyalur.

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

+1cc to Mr.D.Venkatachalam, Advocate SR.No.24986

+1cc to Mr.Pass Associates, Advocate SR.No.25408

C.M.A.No.636 of 2018

NRL(CO)
GN(18/05/2018)

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