

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.854 of 2018
and
C.M.P.No.7059 of 2018

The Managing Director,
M/s.Tamil Nadu State Transport,
Corporation (Kumbakonam) Limited,
Periyamilaguparai, Trichy - 620 001. ...Appellant/1st Respondent

Versus

K.Selvi (Died)
1.Manimaran
2.T.Chinnaponnu ... Respondents 1 & 2/Petitioner 2 & 3
3.V.Rengaraj
4.The Branch Manager,
The New India Assurance Company Ltd.,
No.99/C-3, 1st Floor, Opposite New Bus Stand,
Perambalur. ...3 & 4 Respondents/Respondents 1 & 2

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 28.07.2017 made in M.C.O.P.No.533 of 2011 on the file of the Motor Accident Claims Tribunal, Principal District Judge, Perambalur.

For Appellant : Mr.D.Venkatachalam
For Respondents (1&2): Mr.T.Gopinath

J U D G M E N T

The Appellant/Transport Corporation has filed this appeal against the order dated 28.07.2017 made in M.C.O.P.No.533 of 2011 on the file of the Motor Accident Claims Tribunal, Principal District Judge, Perambalur.

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 18.07.2011 at about 11 a.m., the deceased Karunanithi, while riding his two wheeler bearing Registration No.31-AS-0884 along with his son, the 2nd petitioner minor Manimaran as pillion rider, proceeding in Agaram Seekoor to Ariyalur Road near Vetri High School, the 1st respondent bus bearing Registration No.TN-45-N-1933 came at a high speed dashed against the two wheeler, in which the said Karunanithi was proceeding causing him multiple injuries. At the same time the 2nd respondent/Mini van bearing Registration No.TN-57-N-0092 belonging to the 2nd respondent and insured with the 3rd respondent which was following the 1st respondent bus dashed in the rear side of the 1st respondent bus making the bus to move forward and in that impact the said Karunanithi was dragged to some distance, resulting in the death on the spot itself. The minor petitioner Manimaran also suffered injuries. The accident occurred only due to negligence of the 1st respondent bus driver. At the time of the accident, the deceased was aged 41 years and by working as mason was earning Rs.400/- per day. The petitioners who are the wife, son and mother of the deceased were depending on his income. Hence, the petitioners sought for a sum of Rs.10,00,000/- as compensation from the respondents.

4. On the other hand, opposing the claim of the petitioners, by filing counter, the 1st respondent/Transport Corporation contends that the accident did not occur in the manner alleged by the petitioners. While the bus was proceeding in its regular trip from Agaram Seegur to Jayankondam, while going near Vetripalli, the 1st respondent bus driver saw the motorcyclist coming in the opposite direction in a rash and negligent manner and he immediately took the bus to extreme left side of the road and stopped it. In spite of warning the two wheeler by sounding horn, the rider of the motorcycle came at high speed and dashed against the left side bumper of the bus. At that time, the 2nd respondent mini van which was following the 1st respondent bus very closely dashed on the rear side of the bus, due to which the bus moved forward and dashed against the motorcycle. The 1st respondent bus driver is not liable for the accident. The claim of the petitioner about the age, occupation and income of the deceased is denied. The amount claimed by the petitioner is exorbitant. Thus, the 1st respondent sought for dismissal of the petition.

5. Before the Tribunal, the petitioner 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 respondents R.W.1 was examined, but no documents was produced. The Tribunal, on the basis of available evidence on record, found that the negligence of the 1st respondent bus driver alone caused the accident and passed an award for a sum of Rs.7,32,000/- payable by the 1st respondent/Transport Corporation only and dismissed the petition

against the 2nd and 3rd respondents. Aggrieved over the said finding of the Tribunal, the 1st respondent/Transport Corporation has come forward with the present appeal.

6. The learned counsel for the 1st respondent/Transport Corporation contends that the Tribunal failed to appreciate the evidence on record properly and wrongly fixed the negligence on the driver of the respondent bus. The Tribunal ought to have fixed the negligence on the part of the deceased as well as 2nd respondent Mini van driver alone has resulted in the accident. The age and income of the deceased is not proved by any acceptable means of evidence. The Tribunal wrongly fixed the notional income at higher level and passed an award which is exorbitant. Thus, the 1st respondent/Transport Corporation sought to set aside the award passed by the Tribunal by entertaining the appeal.

7. On the other hand, the learned counsel for the petitioner/claimant contended that the Tribunal correctly appreciated the evidence and fixed the negligence of the 1st respondent bus driver alone caused the accident and the award passed by the Tribunal is just and proper. There is no ground to interfere with the same. Thus, the petitioner/claimant sought for dismissal of the appeal.

8. The learned counsel for the petitioner contended that on 18.07.2011, while the deceased Karunanithi was proceeding in his two wheeler in Agaram Seekoor to Ariyalur main road near the Vetri high school, the 1st respondent bus came in the opposite direction at high speed and dashed against the two wheeler and at the same time, the Mini bus belonging to the 2nd respondent which was coming behind the 1st respondent bus dashed against the rear side of the bus making it to move forward and in the impact, the deceased Karunanithi suffered multiple grievous fatal injuries and died on the spot. The eye-witness to the occurrence, who deposed as P.W.2, clearly stated that the 1st respondent bus driver came at high speed without sounding horn and dashed against the two wheeler, which the deceased was riding, causing him grievous injuries all over his body. The police registered a case as per Ex.P.1 - F.I.R against the driver of the 1st respondent bus only. On the other hand, the driver of the 1st respondent bus, who deposed as R.W.1, stated that only due to negligence of the two wheeler rider, who came at high speed and dashed against the number plate of the 1st respondent bus the accident occurred. Further, at the same time the mini bus belonging to the 2nd respondent dashed on the back side of the respondent bus, resulting in the deceased being run over and he died on the spot. Admittedly, R.W.1 is an interested witness. On the other hand, P.W.2 is a 3rd party and his version of accident corroborates the contents of Ex.P.1 - F.I.R. On the

other hand, assuming what R.W.1 driver says is true, he would have lodged the complaint with the police against the other vehicle driver, but he has not done so. Further, nothing is stated by P.W.2 about the 2nd respondent bus driver coming at high speed. In such circumstances, it is clear that on the basis of available evidence on record, the Tribunal has correctly found that rash and negligent driving by the 1st respondent bus driver alone caused the accident. In such circumstances, the Tribunal is justified in fixing the negligence on the 1st respondent bus driver and holding that the petition is not maintainable against the 2nd and 3rd respondents.

9. The petitioner stated that the deceased was aged 41 years and by working as a mason, was earning Rs.400/- per day. It is clear from Ex.P.2 - Post mortem report that the age of the deceased was 41 years and in the absence of any other documentary proof regarding the age, it will be appropriate to fix the age of the deceased as 41. The petitioner stated that the deceased was earning Rs.400/- per day by working as a mason. However, taking into account the accident occurred during 2001 and other circumstances, the Tribunal has fixed the notional monthly income at Rs.6,000/-. After deducting 1/3rd towards his personal expenses, the Tribunal applied the multiplier as '14' and fixed the loss of income as Rs.6,72,000/-. The Tribunal also awarded various amounts under different heads, totalling in all, a sum of Rs.7,32,000/- was awarded. The reasoning stated by the Tribunal for arriving at such figure is just and proper. The contention of the appellant/1st respondent/Transport corporation that the quantum arrived at by the Tribunal is exorbitant has no legs to stand. Apparently, no ground is made out by the appellant/1st respondent/Transport corporation to interfere with the award passed by the Tribunal, which is fair and just. As such, this Court finds no merit in the appeal and the same is dismissed. The award passed by the Tribunal dated 28.07.2017 made in M.C.O.P.No.533 of 2011 on the file of the Motor Accident Claims Tribunal, Principal District Judge, Perambalur, 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

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To

1.The Principal District Judge,
(The Motor Accident Claims Tribunal)
Perambalur.

2.The Section Officer,
V.R.Section, High Court, Madras.(2 COPIES)

+1cc to Mr.T.GOBINATH, Advocate, S.R.No. 27113

C.M.A.No.854 of 2018

SJ(CO)
TR(17/05/2018)



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