

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.11.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2706 of 2018
and C.M.P.No.20473 of 2018

Tamil Nadu State Transport Corporation
(Villupuram) Limited.,
Rep. by its Managing Director,
Tiruvannamalai Region,
Tiruvannamalai, Tiruvannamalai District.

.. Appellant/Respondents

Vs.

1.M.Kuppusamy
2.K.Umavathy
3.Minor Ravina Johnsi

(minor 3rd petitioner is represented by
her next friend father M.Kuppusamy)

.. Respondents/Petitioner

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 16.11.2016 made in M.C.O.P.No.38 of 2015 on the file of the Motor Accidents Claims Tribunal, Sub Court, Vaniyambadi.

For Appellant : Mr.K.J.Sivakumar

J U D G M E N T

The Civil Miscellaneous Appeal is filed against the judgment and decree dated 16.11.2016 made in M.C.O.P.No.38 of 2015 on the file of the Motor Accidents Claims Tribunal, Sub Court, Vaniyambadi.

2. The appellant is respondent and the respondents are the claimants in M.C.O.P.No.38 of 2015 on the file of the Motor Accidents Claims Tribunal, Sub Court, Vaniyambadi. The respondents filed the said M.C.O.P. claiming a sum of Rs.12,00,000/- as compensation for the death of one K.Ravin Johnson, who died in the accident that took place on 18.12.2014.

3. According to the respondents, on 18.12.2014, while the deceased was travelling as pillion rider on the two wheeler on the extreme left side of the road in the National Highway at Abdu Akkim College Junction, Keil Visharam, the driver of the bus belonging to the appellant/Transport Corporation who drove the bus in a rash and negligent manner, dashed against the two wheeler and caused the accident. Due to the said impact, the deceased sustained severe head injuries and died on the spot. According to the respondents, the accident occurred only due to the rash and negligent driving by the driver of the bus belonging to the appellant/Transport Corporation. At the time of accident, the deceased was 22 years old and was a first year student in Amirtha Catering Institute, Chennai.

4.The appellant/Transport Corporation filed counter statement and denied all the averments made by the respondents in the claim petition. According to the appellant, when the motorcycle, which was coming from Ranipet was driven by its rider in a rash and negligent manner, the driver of the bus belonging to the appellant/Transport Corporation immediately stopped the bus and at that time, a lorry crossed from the left side of the road towards the highway and on seeing this, the driver of the motorcycle lost his control, fell down, the bike was dragged and dashed against the bus. Therefore, the driver of the bus belonging to the appellant/Transport Corporation is not responsible for the accident and that the appellant is not liable to pay compensation to the respondents.

5.Before the Tribunal, the appellant/Transport Corporation examined the driver of the bus as R.W.1 and no documentary evidence was let in by them. The respondents examined P.W.1 and P.W.2 and marked 6 documents as Exs.P1 to P6.

6.The Tribunal after considering the pleadings, oral and documentary evidence, fixed 75% negligence on the part of the appellant/Transport Corporation and awarded a total sum of Rs.12,50,000/- and directed the appellant to pay a sum of Rs.9,37,500/- as compensation to the respondents/claimants.

7.Against the said award passed by the Tribunal, dated 16.11.2016 made in M.C.O.P.No.38 of 2015, the appellant/Transport Corporation has come out with the present Civil Miscellaneous Appeal.

8.The learned counsel appearing for the appellant contended that the Tribunal has erred in considering the evidence of P.W.1, father of the deceased, who has not even seen the occurrence. No valid documents are filed by the respondents to prove the age of the deceased. The Tribunal ought to have

considered the evidence of R.W.1, driver of the bus, who is a competent person to speak about the accident. The Tribunal failed to consider that the deceased was a student and he is a non-earning person and his notional income has to be taken as Rs.15,000/-. The amount fixed by the Tribunal towards loss of monthly income at Rs.10,000/- is on the higher side. Further, the Tribunal has awarded a sum of Rs.1,00,000/- towards loss of love and affection, which is also on higher side. Therefore, he prayed for setting aside the award passed by the Tribunal.

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

10.From the materials on record, it is seen that the father of the deceased/P.W.1 in his evidence deposed that while the deceased was travelling as pillion rider on the two wheeler on the extreme left side of the National Highway road at Abdul Akkim College Junction, Keil Visharam, the driver of the bus belonging to the appellant/Transport Corporation, who drove the bus in a rash and negligent manner, dashed against the two wheeler and caused the accident. Due to the said impact, the deceased sustained severe head injuries and died on the spot. R.W.1, the driver of the bus, in his evidence deposed that the two wheeler, in which the deceased was travelling as pillion rider, came in a rash and negligent manner and dashed against the bus. However, R.W.1 admitted in his cross-examination that F.I.R. and charge sheet are filed against him. Therefore, the Tribunal considering the evidence of R.W.1, fixed contributory negligence on the part of the rider of the two wheeler at 25% and on the part of the driver of the bus belonging to the appellant at 75%. There is no error in the said findings warranting interference by this Court.

11.As far as quantum of compensation is concerned, from the averments made in the claim petition, it is seen that the deceased was a student, aged 22 years and the Tribunal fixed the notional income of the deceased at Rs.10,000/- per month. As per Ex.P4/Transfer Certificate, the date of birth of the deceased is 27.11.1991. The Tribunal fixed the age of the deceased as 23 years at the time of accident and fixed a sum of Rs.10,000/- per month as notional income of the deceased. The deceased would have spent $\frac{1}{2}$ of his income for his personal expenses and hence, the multiplicand is fixed as Rs.60,000/- (Rs.10,000/- X 12 X $\frac{1}{2}$). As per the judgment of the Hon'ble Apex Court reported in 2009 ACC 708 (SC) (Sarla Verma and others v. Delhi Transport Corporation and another), the multiplier would be 18. Therefore, the loss of dependency is arrived at Rs.10,80,000/- (Rs.60,000 X 18). Thus, the total sum of compensation is arrived at Rs.12,50,000/-. The Tribunal awarded a sum of Rs.9,37,500/- as compensation to the respondents/claimants by fixing 25%

negligence on the part of the rider of the two wheeler as Rs.3,12,500/- from Rs.12,50,000/-. In my considered opinion, the compensation awarded by the Tribunal is just and reasonable. In the above circumstances, this Court is not inclined to interfere with the award passed by the Tribunal.

12. In the result, the award passed by the Tribunal is hereby confirmed and the Civil Miscellaneous Appeal is dismissed. The appellant/Transport Corporation is directed to deposit the award amount of Rs.9,37,500/- with 6% per annum interest from the date of filing of the petition till the date of realisation, less the amount deposited, if any, within a period of twelve weeks from the date of receipt of a copy of this judgment. On such deposit, the respondents 1 and 2/claimants 1 and 2 are permitted to withdraw their respective shares as apportioned by the Tribunal along with proportionate interest and costs, less the amount if any, already withdrawn. The share of the minor/third respondent is directed to be deposited in any one of the nationalised Banks till she attains majority. The first respondent/father of the minor is permitted to withdraw interest once in three months directly from the Bank. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

krk/kj

To

Motor Accidents Claims Tribunal,
The Subordinate Judge, Vaniyambadi.

+1cc to Mr.J.Sivakumar, Advocate, S.R.No.79089

C.M.A.No.2706 of 2018 and
C.M.P.No.20473 of 2018

RK(CO)
GSP(31/01/2019)

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