

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3074 of 2018
and C.M.P.No.23298 of 2018

The Managing Director,
Tamil Nadu State Transport Corporation,
Kumbakonam Limited, Periya Melakuparai,
Trichirapalli 620 001.

.. Appellant/R1

Vs.

1.Meena
2.Maayavan
3.Poovayee

.. R1/Petitioner

..RR2 & 3/RR2 & 3

PRAYER:

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, against the judgment and decree dated 11.01.2018 made in M.C.O.P.No.812 of 2015 on the file of the Principal District Court, (Motor Accident Claims Tribunal), Perambalur.

For Appellant : Mr.D.Venkatachalam

J U D G M E N T

The Civil Miscellaneous Appeal is filed challenging both the quantum as well as the liability fastened on them by the award dated 11.01.2018 made in M.C.O.P.No.812 of 2015 on the file of the Principal District Court, (Motor Accident Claims Tribunal), Perambalur.

2.The appellant is the 1st respondent in M.C.O.P.No.812 of 2015 on the file of the Principal District Court, (Motor Accident Claims Tribunal), Perambalur. The 1st respondent/claimant filed the said claim petition, claiming a sum of Rs.30,00,000/- as compensation for the death of one Mahendran, husband of the 1st respondent, son of the respondents 2 & 3, who died in the accident that took place on 29.08.2015.

3. According to the 1st respondent, on 29.08.2015, while the deceased was riding his motor cycle in Aathur Bye pass Road, at North Madhavi Road, a bus bearing Registration No. TN-45-N-3645, belonging to the appellant-Transport Corporation driven by its driver in a rash and negligent manner, dashed against the deceased and dragged him along with his motor cycle for some distance. As a result of which, the deceased sustained multiple grievous injuries and he died soon after he was admitted in the Government Hospital. The accident had occurred only due to rash and negligent driving by the driver of the bus belonging to the appellant-Transport Corporation. The deceased was aged 23 years and working as a Mason and earning a sum of Rs.600/- per day.

4. The appellant-Transport Corporation filed counter statement and denied all the averments made by the 1st respondent. According to the appellant-Transport Corporation, when the driver of the bus involved in the accident was driving the bus in a moderate speed keeping to the left half of the road, following the traffic rules, the deceased along with two pillion riders in a moped, riding the vehicle in a rash and negligent manner, lost control and dashed against the front right side of the stopped bus. The deceased lost control due to triples. The deceased also did not possess any valid licence at the time of accident. The 1st respondent ought to have impleaded the owner and insurer of the motor cycle as parties to the claim petition. The petition is bad for non-joinder of necessary parties to the claim and prayed for dismissal of the claim petition.

5. Before the Tribunal, the 1st respondent examined herself as P.W.1 and marked 6 documents as Exs.P1 to P6. On behalf of the appellant-Transport Corporation, the 2nd respondent/father of the deceased was examined as R.W.1 and the driver of the bus was examined as R.W.2 and one document was marked as Ex.R1.

6. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred solely due to the rash and negligent driving by the driver of the bus belonging to the appellant-Transport Corporation and awarded a sum of Rs.11,18,072/- as compensation to the respondents and directed the appellant-Transport Corporation to pay the same.

7. Challenging both the quantum as well as the liability fastened on them by the said award passed by the Tribunal dated 11.01.2018 made in M.C.O.P.No.812 of 2015, the appellant-Transport Corporation has filed the present Civil Miscellaneous Appeal.

8. The learned counsel appearing for the appellant-Transport Corporation contended that the Tribunal ought not to have

considered the evidence of P.W.1, wife of the deceased, who is the interested witness. The Tribunal failed to note that mere registration of FIR against the driver of the bus will not be a ground for fixing negligence against the driver. The Tribunal is bound by criminal proceedings. The Tribunal failed to consider the evidence of R.W.2, who deposed that three persons travelled in the motor cycle negligently, which is the cause for the accident. In the absence of any evidence to prove the monthly income of the deceased, the Tribunal has fixed Rs.7,000/- as the monthly income, which is on the 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.The claimant/1st respondent as P.W.1 has deposed the manner in which the accident had occurred. On a perusal of the records it is seen that P.W.1, wife of the deceased is not an eye witness to the accident, while R.W.1/father of the deceased has deposed as an eye witness that when the deceased travelled in the moped along with two pillion riders, the bus belonging to the appellant-Transport Corporation came in a rash and negligent manner and dashed against the moped. Ex.P1/FIR has been registered against the driver of the bus belonging to the appellant-Transport Corporation. R.W.2, driver of the bus has deposed that the accident occurred due to the negligence on the part of the deceased who travelled in triples. But no corroborative evidence was let in on the side of the appellant to prove the said deposition of the interested witness. Hence, on the basis of evidence of P.W.1 and Ex.P1/FIR, the Tribunal has held that the accident occurred due to rash and negligent driving by the driver of the bus belonging to the appellant-Transport Corporation. I do not find any error in the said finding of the Tribunal, warranting interference by this Court.

11.As far as the quantum of compensation is concerned, Ex.P2, postmortem report shows that the deceased died due to the injuries sustained in the accident. Though the 1st respondent/claimant has claimed that the deceased was working as a Mason and earning a sum of Rs.600/- per day, in the absence of any evidence to prove the same, the Tribunal rightly fixed the monthly income of the deceased at Rs.7,000/-. After deducting 1/3 towards the personal expenses of the deceased, as there are three dependants and applying the multiplier of '18', for the deceased who was aged 25 years at the time of accident, calculated the loss of income as Rs.10,08,072/- [Rs.4,667 x 12 x 18]. The Tribunal granted a sum of Rs.40,000/- each towards loss of love and affection and loss of consortium and a sum of Rs.15,000/- each towards funeral expenses and loss of estate. The Tribunal after considering both the oral and documentary

evidence, awarded a total sum of Rs.11,18,072/- as compensation to the respondents. 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. Accordingly, 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 along with interest and costs, less the amount already 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 are permitted to withdraw their share of the award amount with interest and costs, as per the ratio of apportionment fixed by the Tribunal, after adjusting the amount already withdrawn, if any, by making necessary applications before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

gsa

To

1. The Principal District Judge,
(Motor Accident Claims Tribunal), Perambalur.
2. The Section Officer,
VR Section, High Court,
Madras-104

+1cc to Mr.D.Venkatachalam, Advocate, S.R.No.89237

C.M.A.No.3074 of 2018
and C.M.P.No.23298 of 2018

EV(CO)
CS/07/05/2019