

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.12.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2852 of 2018
and C.M.P.No.21701 of 2018

The Managing Director,
Tamil Nadu Transport Corporation,
Kumbakonam Town and Taluk
Thanjavur District. ... Appellant

Vs.

1.Murugayee
2.Anjudhammal
3.Murugammal
4.Minor Vijayadharshini ... Respondents
(Minor represented by her guardian
and next friend mother, Murugayee)

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, against the award dated 22.02.2017 made in M.C.O.P.No.75 of 2015 on the file of the Sub Court, (Motor Accident Claims Tribunal), Tiruvarur.

For Appellant : Mr.D.Venkatachalam

J U D G M E N T

The Civil Miscellaneous Appeal is filed against the award dated 22.02.2017 made in M.C.O.P.No.75 of 2015 on the file of the Sub Court, (Motor Accident Claims Tribunal), Tiruvarur.

2.The appellant is the respondent, respondents are the claimants/petitioners in M.C.O.P.No.75 of 2015 on the file of the Sub Court, (Motor Accident Claims Tribunal), Tiruvarur. The respondents filed the said claim petition, claiming a sum of Rs.20,00,000/- as compensation for the death of one Seerangam, husband of the 1st respondent and father of the respondents 2 to 4, who died in the accident that took place on 12.05.2010.

3.According to the respondents, on 12.05.2010, when the deceased was riding his motor cycle bearing Registration No.TN-50-E-5815 with due care and caution, observing traffic rules and regulations, a bus belonging to the appellant-Transport Corporation bearing Registration No. TN-45-N-3025, driven in a

rash and negligent manner, came in the opposite direction and dashed against the motor cycle, as a result of which the deceased was thrown away from the motor cycle and sustained injuries and died on the spot. The accident had occurred solely due to the rash and negligent driving by the driver of the appellant bus and hence, claimed compensation.

4.The appellant-Transport Corporation filed counter statement and denied all the averments made by the respondents. According to the appellant, the driver of the bus drove the vehicle with moderate speed. At that time, a motor cyclist came from the opposite direction driven in a rash and negligent manner. Noticing this, the appellant driver blown horn and turned the bus to the left side, applied brakes and stopped the bus on the left extreme of the mud road. In spite of the precautions taken by the appellant driver, the deceased came on the wrong side and dashed against the front right corner of the bus and the accident had occurred. The appellant also contended that the deceased does not possess valid driving licence at the time of the accident. The appellant driver is no way responsible for the accident and hence, the appellant is not liable to pay any compensation to the respondents and prayed for dismissal of the claim petition.

5.Before the Tribunal, the 1st respondent examined herself as P.W.1 and two others were examined as P.Ws.2 and 3 and 7 documents were marked as Exs.P1 to P7. On behalf of the appellant, the conductor of the bus belonging to the appellant-Transport Corporation was examined as R.W.1 and the Inspector of Police was examined R.W.2 and no documentary evidence was filed.

6.The Tribunal after considering the pleadings, oral and documentary evidence, held that the driver of the bus belonging to the appellant-Transport Corporation is responsible for the accident and awarded a sum of Rs.8,52,000/- as compensation to the respondents.

7.Aggrrieved by the said award passed by the Tribunal, dated 22.02.2017 made in M.C.O.P.No.75 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, who is the wife of the deceased and interested witness. The Tribunal failed to note that the F.I.R. registered against the driver of the bus has been closed as 'Mistake of Facts', since the accident occurred due to the negligence of the deceased. The Tribunal failed to consider the evidence of R.W.1 who categorically stated that the

accident occurred due to the rash and negligent act of the deceased. The evidence of R.W.1 has been corroborated by the evidence of R.W.2 who is the Inspector of Police. The Tribunal without properly appreciating the evidence on record, awarded the amounts which are on higher side. Therefore, he prayed for setting aside the award passed by the Tribunal.

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

10.From the materials on record, it is seen that P.W.1/wife of the deceased who was examined as P.W.1 had deposed that she has not seen the accident, but deposed that the accident occurred due to the rash and negligent driving by the driver of the bus belonging to the appellant-Transport Corporation. P.W.3/eye witness had deposed that only the driver of the bus belonging to the appellant-Transport Corporation drove the bus in a rash and negligent manner and dashed against the deceased and caused the accident. Due to the said impact, the deceased sustained severe injuries and died on the spot. The Tribunal considering Ex.P3, Motor Vehicle Inspector's Report (Bus) and Ex.P4, Motor Vehicle Inspector's Report (Motor Cycle), held that the accident occurred only due to the rash and negligent driving by the driver of the bus belonging to the appellant-Transport Corporation. I do not find any error in the reasoning of the Tribunal.

11.As far as the quantum of compensation is concerned, the Tribunal has fixed notional income of the deceased at Rs.6,000/- per month, deducted 1/3rd towards his personal expenses and since the age of the deceased as seen from the postmortem report is 60, applied the multiplier of '9' and arrived at the compensation towards loss of income at Rs.4,32,000/- (Rs.4,000 X 12 X 9). The Tribunal has awarded a sum of Rs.4,00,000/- towards loss of love and affection, a sum of Rs.10,000/- towards funeral expenses, a sum of Rs.5,000/- under the heads of transportation and damages caused to the vehicle, each, which is reasonable. The Tribunal after considering both the oral and documentary evidence, awarded a total sum of Rs.8,52,000/- as compensation to the respondents/claimants. 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 entire award amount along with interest and costs, 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 to 3 are permitted to withdraw their share of the award amount, as per the ratio of apportionment fixed by the Tribunal, with interest and costs, after adjusting the amount already withdrawn, if any, by making necessary applications before the Tribunal. The share of the 4th respondent/Minor is directed to be deposited in any one of the Nationalised Bank till she attains majority. The first respondent/mother of the minor is permitted to withdraw the interest amount once in three months for the welfare of the 4th respondent/Minor. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

gsa

To

- 1.The Subordinate Judge,
(Motor Accident Claims Tribunal), Tiruvarur.
2. The Section Officer,
V.R. Section, High Court,
Madras.(2 copies)

+1cc to Mr.D.Venkatachalam, Advocate, S.R.No. 83564

C.M.A.No.2852 of 2018
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