

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2962 of 2018
and C.M.P.No. 22444 of 2018

The Managing Director
Tamil Nadu State
Transport Corporation
Kancheepuram.

.. Appellant/R2

Vs.

1.R.Bhuvaneswari
2.Minor Kayathri
(R2 represented by her mother
and next friend R1)

.. R1 + R2/Claimants

3.The Managing Director
Pallavan Transport Corporation

.. 3rd Respondents/R1

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, against the judgment and decree dated 09.09.2003 made in M.C.O.P.No.700 of 2001 on the file of the Motor Accident Claims Tribunal, Additional District Court, Fast Track Court No.I, Chengalpet.

For Appellant : Mr.K.J.Sivakumar

JUDGMENT

The Civil Miscellaneous Appeal is filed against the award dated 09.09.2003 made in M.C.O.P.No.700 of 2001 on the file of the Motor Accident Claims Tribunal, Additional District Court, Fast Track Court No.I, Chengalpet.

2. The appellant/Transport Corporation is the second respondent in M.C.O.P.No.700 of 2001 on the file of the Motor Accident Claims Tribunal, Additional District Court, Fast Track Court No.I, Chengalpet. The respondents 1 and 2/claimants filed the said M.C.O.P. claiming a sum of Rs.3,00,000/- as compensation for the death of one Ravi, who died in the accident that took place on 11.10.1994.

3. According to the respondents 1 and 2, on 11.10.1994, while the deceased was riding his motorcycle from Tambaram to

Chennai, the driver of the bus belonging to the Pallavan Transport Corporation, suddenly took a right turn from near Gandhi road and hit the deceased and as a result, the deceased lost balance and fell down on the road. At that time, the driver of the bus belonging to the appellant/Transport Corporation drove the bus in a rash and negligent manner, ran over the deceased and caused the accident. Due to the said impact, the deceased died on the spot. According to the respondents 1 and 2, the accident occurred only due to rash and negligent driving by the drivers of both the buses belonging to the third respondent/Pallavan Transport Corporation and the appellant. At the time of accident, the deceased was aged 28 years. He was working as a temple priest and thereby, he was earning a sum of Rs.3,315/- per month.

4. The appellant/Transport Corporation filed counter statement and denied all the averments made by the respondents 1 and 2. According to the appellant, on the date of accident i.e., on 11.10.1994, no accident has taken place by the driver of the bus belonging to the appellant/Transport Corporation. If really, the appellant bus was involved in the accident, the public would not have allowed the bus to proceed further. After one week from the date of accident, the appellant/Transport Corporation received a letter from the Police Station. The bus number of the appellant/Transport Corporation is not mentioned in F.I.R. Therefore, the appellant is not liable to pay compensation to the respondents 1 and 2.

5. The third respondent/Pallavan Transport Corporation filed counter statement and denied all the averments made by the respondents 1 and 2. According to them, the said bus was driven by its driver in a moderate speed following traffic rules. The deceased has driven the motorcycle in a rash and negligent manner, dashed on the left back side of the bus and fell down. Therefore, the appellant/Transport Corporation alone is liable to pay compensation to the respondents 1 and 2.

6. Before the Tribunal, the appellant examined R.W.1 and R.W.2 and did not mark any document. The first respondent examined herself as P.W.1 and one Thangamani Pandiarajan/eye witness as P.W.2 and marked three documents as Exs.P1 to P3.

7. The Tribunal after considering the pleadings, oral and documentary evidence held that the accident occurred due to rash and negligent driving by the driver of the bus belonging to the appellant/Transport Corporation and directed the appellant to pay a sum of Rs.2,11,400/- as compensation to the respondents 1 and 2.

8. Against the said award passed by the Tribunal, dated

09.09.2003 made in M.C.O.P.No.700 of 2001, the appellant/Transport Corporation has filed the present Civil Miscellaneous Appeal challenging the liability fastened on them as well as the quantum of compensation awarded by the Tribunal.

9. The learned counsel appearing for the appellant contended that the Tribunal has erred in its finding that the driver of the bus belonging to the appellant/Transport Corporation alone is responsible for the accident. The Tribunal without properly appreciating the evidence on record erred in presuming the age of the deceased as 29 years and monthly income of the deceased at Rs.1,500/- and erroneously awarded higher compensation towards loss of income by adopting multiplier 18. The amounts awarded by the Tribunal towards loss of consortium and funeral expenses are excessive and prayed for setting aside the award passed by the Tribunal.

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

11.As far as liability is concerned, from the materials available on record, it is seen that as per the evidence of P.W.2/eye witness, the deceased dashed against the left hand side of the bus belonging to the third respondent/Pallavan Transport Corporation. As per Ex.P1/F.I.R., which was lodged by a third party, the deceased alone hit the back side of the bus belonging to the third respondent/Pallavan Transport Corporation. The Tribunal considering the evidence of P.W.2 and also Ex.P1, held that the deceased after hitting back side of the bus belonging to the third respondent/Pallavan Transport Corporation, fell down on the road and at that time, the driver of the bus belonging to the appellant/Transport Corporation drove the same in a rash and negligent manner and ran over the deceased. Due to the said impact, the deceased died on the spot. The Tribunal has further held that the driver of the bus belonging to the third respondent/Pallavan Transport Corporation is not responsible for the accident and the accident occurred only 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 reasoning of the Tribunal.

12. As far as the quantum of compensation is concerned, the respondents 1 and 2 in the claim petition stated that the deceased was aged 28 years and was earning a sum of Rs.3,315/- per month at the time of accident. But they have not produced any documentary evidence to prove the same. In the absence of any evidence with regard to monthly income of the deceased, the Tribunal has fixed Rs.1,500/- per month as notional income of the deceased and considering Ex.P2/Post-mortem certificate, fixed age of the deceased as 29 years at the time of accident.

The Tribunal applying multiplier 18 and deducting a sum of Rs.600/- towards his personal expenses, awarded a sum of Rs.1,94,400/- (900 X 12 X 18) towards loss of income, which is in order. The Tribunal after considering both the oral and documentary evidence, awarded a total sum of Rs.2,11,400/- as compensation to the respondents 1 and 2/claimants under different heads. 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.

13. 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 first respondent/first claimant is permitted to withdraw her respective share as apportioned by the Tribunal along with interest and costs, after adjusting the amount if any, already withdrawn. The share amount of the minor/second respondent shall be deposited in any one of the Nationalised Banks till the minor girl attains majority. The mother of the second respondent/first respondent herein is permitted to withdraw the interest amount once in three months for the welfare of the minor/second respondent. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

Additional District Judge
The Motor Accident Claims Tribunal
(Fast Track Court No.I), Chengalpet.

C.M.A.No.2962 of 2018
and C.M.P.No.22444 of 2018

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CS/11/04/2019