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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.08.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M. VELUMANI

C.M.A. (MD) No.24 of 2016

and

C.M.P (MD) .No.367 of 2016

Tamil Nadu State Transport Corporation,
(Kumbakonam),
Through its Branch Manager
Karaikudi Division,
Marudhupandiyar Nagar,
Karaikudi.

... Appellant / 2nd respondent

Vs.

1.Philominal

2.Sahaya Prabha

3.Paul Deepa

4.Thomas Sudha

5.Sebasteen Immaculate
Vedammal (Died)

6.K.Mathivanan

.. Respondents / Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 to set aside the Judgment and Decree passed by the Motor Accident Claims Tribunal, Subordinate and Assistant Sessions Court, Devakottai in MCOP.No.12 of 2011, dated 22.02.2013.

For Appellant : Mr. D. Sivaraman

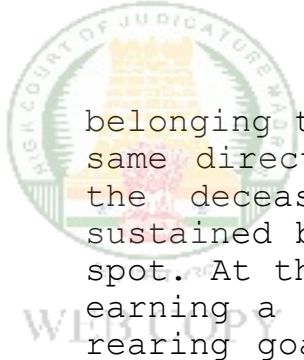
For respondents 1 to 5 : M/s. VR.Shanmuganathan

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree passed dated 22.02.2013, in MCOP.No.12 of 2011, on the Motor Accident Claims Tribunal, Subordinate and Assistant Sessions Judge, Devakottai.

2. The appellant / Transport Corporation is the second respondent in MCOP.No.12 of 2011, on the file of the Motor Accident Claims Tribunal / Subordinate and Assistant Sessions Judge, Devakottai. The Sixth respondent is the first respondent in the said MCOP. The respondents 1 to 5 / claimants filed the said claim petition claiming a sum of Rs.7,58,500/- as compensation, for the death of one Kulandaisamy, who died in the accident, that occurred on 17.03.2010.

3. According to the respondents 1 to 5 / claimants, on 17.03.2010, while the said Kulandaisamy riding the bicycle, the bus



belonging to the appellant bearing Reg. No.TN-63-N-1296 came in the same direction in a rash and negligent manner and dashed against the deceased Kulandaisamy from behind. Due to the injuries sustained by him in the accident, the said Kulandaisamy died on the spot. At the time of accident, the deceased was 55 years and he was earning a sum of Rs.5,000/- per month by doing agricultural works, rearing goats and cows and selling milk. The respondents 1 to 5 are the legal heirs and dependants of the deceased. According to the claimants, the accident occurred only due to the rash and negligent driving by the sixth respondent, driver of the appellant. The appellant, who is the owner of the vehicle, is liable to pay compensation along with sixth respondent.

4. The appellant filed counter statement and denied all the averments made by the claimants and contended that the sixth respondent, driver drove the vehicle slowly and very carefully, the deceased himself invited the accident by suddenly crossing the road. The accident did not take place due to the rash and negligent driving by the sixth respondent. The appellant and the sixth respondent are not liable to pay any compensation.

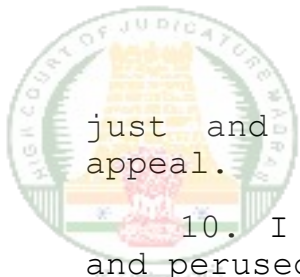
5. Before the Tribunal the first respondent examined himself as PW.1 and examined one Arokiysamy as PW.2 and six documents were marked as Exs. P1 to P6. The appellant examined one Mathivanan as RW.1 and they did not let in any documentary evidence.

6. The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred only due to the rash and negligent driving by the sixth respondent, driver of the appellant / Transport Corporation bus and the appellant is liable to pay compensation and awarded a sum of Rs.5,54,500/- as compensation to the respondents 1 to 5.

7. Against the said Award, the appellant has filed the present appeal.

8. The learned counsel appearing for the appellant contended that the Tribunal failed to appreciate the evidence let in by the parties properly and failed to note that the accident occurred only due to the negligence of the deceased. He further contended that PW.2, who was examined by the respondents 1 to 5, is not a Trust worthy witness and the Tribunal ought to have rejected the same. Further, the compensation awarded by the Tribunal is excessive and liable to be reduced.

9. Per contra, the learned counsel appearing for the respondents 1 to 5 contended that the respondents 1 to 5 proved that accident occurred only due to rash and negligent driving by the sixth respondent. He further stated that the Tribunal considering the pleadings oral and documentary evidence held that the accident took place only due to the rash and negligent driving by the sixth respondent. The Tribunal has rightly accepted the evidence of PW.2, rejected the evidence of RW.1 and awarded compensation, which is



just and proper compensation and prayed for dismissal of this appeal.

10. I have heard the learned counsel appearing on either side and perused the materials available on record.

WEB COPY 11. Before the Tribunal, the respondents 1 to 5 have examined PW.2 eye witness and marked Ex.P1 - First Information Report, Ex.P2 - Charge Sheet, which are laid against the sixth respondent. The appellant has examined sixth respondent, driver of the bus as RW.1 and has not examined any independent witness to substantiate their claim that the deceased suddenly crossed the road on seeing the bus, fell down and got injuries. The Tribunal rightly accepting the evidence of PW.1 and Exs.P1 and P2 held that the accident occurred only due to the rash and negligent driving by the sixth respondent.

12. As far as the quantum of compensation is concerned, the Tribunal fixed the notional income of the deceased at Rs.4,500/- per month and after deducting 1/3rd towards personal expenses of the deceased, by applying multiplier 11, applicable to the age of the deceased, granted a sum of Rs.3,96,000/- towards loss of income, which, in the considered opinion of this Court, is reasonable. Further, the Tribunal considering the claim of the respondents 1 to 5 and evidence on record, awarded compensation under different heads and the said amount is just and reasonable. The learned Judge has exercised his power conferred on him properly and there is no irregularity or illegality warranting interference by this Court.

13. In the result,

(i) This Civil Miscellaneous Appeal is dismissed by confirming the order dated 22.02.2013 made in MCOP.No.12 of 2011, on the file of the Motor Accident Claims Tribunal, Subordinate and Assistant Sessions Court, Devakottai.

(ii) The appellant / Transport Corporation is directed to deposit the amount awarded by the Tribunal together with interest, after deducting the amount already deposited if any, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the respondents 1 to 5 are permitted to withdraw their share as per the apportionment fixed by the Tribunal, on filing proper application before the Tribunal.

(iii) No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(RTI)

/True Copy/



To

The Motor Accidents Claims Tribunal,
Subordinate and Assistant Sessions Court,
Devakottai.

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Copy to

The Section Officer, (2 copies)
VR Section,
Madurai Bench of Madras High Court,
Madruai.

+1cc to Mr.D. Sivaraman, Advocate Sr.No.80316
+1cc to Mr.VR.Shanmuganathan, Advocate Sr.No.80237

TRP

VB/SV/SAR1/19.12.2018/4P/6C

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