

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.07.2019

CORAM:

THE HON'BLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.2399 of 2003

1. Lakshmi
2. Minor Yuvaraj
rep.by his mother D.Lakshmi as next
friend and natural guardian. Appellants/Petitioners

Vs.

1. The Managing Director,
Pattukkottai Alagiri Transport,
Corporation, Vellore.
2. Rathina Chettiar,
3. M/s.Oriental Insurance Co.Ltd.,
M.T.P.Claims Office,
South India Co.Op.Building,
No.38, Anna Salai, Chennai-2.
4. V.Jagadambal. Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 28.07.2000 made in MCOP No.289 of 1992 on the file of the Motor Accident Claims Tribunal, Chengalpattu (Additional Sub Court, Chengalpattu).

For Appellants : Mr.N.Veerassami

For R-1 : Mr.S.V.Vasanth Kumar

Not ready Notice : Regarding RR2 to 4.

J U D G M E N T

This appeal filed by the claimants / appellants as against the award passed by the claims Tribunal in MCOP No.289 of 1992, awarding a sum of Rs.1,12,500/- as compensation, but deducting 50% viz., Rs.55,750/- towards contributory negligence on the part of the deceased.

2. It is the case of the claimants/appellants that on 21.10.1991 at about 3.15 p.m., one Durairaj/deceased was traveling in a car and when the Car was nearing G.W.T.Road, the

first respondent's Bus, which was coming from the opposite direction, in a rash and negligent manner, dashed against the Car and due to the said accident, the deceased sustained multiple injuries and died on the spot. Stating that the accident happened solely on the rash and negligent driving of the first respondent, the legal representatives of the Durairaj have filed the claim petition. The Tribunal based on the documents has fixed the liability on the driver of the bus and also fixed contributory negligence on the part of the deceased and ultimately awarded the compensation at Rs.55,750/-.

3. Heard both sides.

4. The learned counsel appearing for the appellants/claimants submitted that the Tribunal erred in holding that the contributory negligence fixed by the Tribunal is perverse, since the finding on that was without any legal basis; the monthly contribution fixed at Rs.6,000/- by the Tribunal is too low, since the Hon'ble Supreme Court in Syed Sadiq's case has fixed the monthly income at Rs.6,500/- for an employee, who worked in an unorganized sector and further, the award of compensation on all the heads need significant enhancement.

5. Per contra, the learned counsel appearing for the Transport Corporation/first respondent submitted that the FIR shows that the Car driver alone was responsible for the accident and as such, the first respondent herein is not liable to compensate the claimants; the age, avocation and the monthly income of the deceased were denied and therefore, he prays for dismissal of the Appeal.

6. This Court considered the said submissions made by the learned counsel for both sides and perused the materials available on record.

7. The Tribunal has proceeded on the basis that on whose negligence the accident had happened and the ultimate amount of compensation payable. While, answering the said issues, the Tribunal though taken note of the FIR, death report, discharge summary and the evidence account on both sides, in detail, failed to take note of the fact that the driver of the Bus was not examined, but the conductor of the Bus alone was examined.

8. It is not in dispute that the accident was a head on collision between the Car and Bus. The best person to speak about the manner of accident is the driver of the bus and car. When the best evidence has not spoken about the manner of evidence, the same speaks volume. When that be so, the Tribunal ought to have drawn adverse inference against the Transport

Corporation Bus driver, since the documents and the evidence produced by the claimants would go to show that the driver of the Car was not at fault. In such view of the matter, this Court is of the opinion that the finding on contributory negligence rendered by the Claims Tribunal has to be set-aside and is set aside accordingly.

9. So far as the quantum of compensation awarded by the Claims Tribunal is concerned, it has to be pointed out that the loss of income and itemization done by the Claims Tribunal are based on settled principles of law and documents produced. Hence, the same does not require any interference. Thus, the findings on quantum are confirmed as such.

10. In the result, the Civil Miscellaneous Appeal is partly-allowed by setting aside, the finding of the Tribunal with regard to 50% of contributory negligence fixed on the deceased. No costs.

11. The Transport Corporation / first respondent herein shall deposit the entire compensation of Rs.1,12,500/- along with interest at the rate of 7.5% per annum, from the date of petition till the date of deposit, less the amount already deposited, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal shall transfer the award amount as per the ratio of apportionment made by it, to the bank account of the first appellant/claimant, through RTGS within a period of one week thereafter. As far as the minor claimant is concerned, it is submitted by the learned counsel for the appellants/claimants that the second appellant/claimant attained majority as of now. Hence, on such application being taken out, the Tribunal shall transfer the second appellant's share of the award amount to his bank account through RTGS.

-s/d-

सत्यमेव जयते
Assistant Registrar (CS-IX)

True Copy

Sub-Assistant Registrar

kv / srk

To

1.The Additional Subordinate Judge
Motor Accident Claims Tribunal, Chengalpattu

Copy to

The Section Officer,
V.R. Section
High Court, Madras.

+1 CC to Mr.N.Veerasamy, Advocate sr 54364.

+1 CC to Mr.S.V.Vasantha Kumar, Advocate sr 54333.

C.M.A.No.2399 of 2003

VGI (CO)
SP(02/03/2020)



WEB COPY