IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2543 of 2015
and
M.P.No.1 of 2015

The Managing Director
Tamilnadu State Transport Corporation
Sathuvachary
Vellore. ... Appellant/Respondent

Vs.

1.Sathiya

2.Minor Kirthika
(Represented by mother and natural guardian, 1st respondent Sathiya)

3.Ramthaye

4.Thangaraj ... Respondents/Petitioners

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 30.10.2014 made in M.C.O.P.No.334 of 2012 on the file of Motor Accident Claims Tribunal, District Court - II, Kanchipuram.

For Appellant : Mr.N.Desinghu

For Respondents : Not ready in Notice

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Transport Corporation challenging the award dated 30.10.2014 made in M.C.O.P.No.334 of 2012 on the file of Motor Accident Claims Tribunal, District Court - II, Kanchipuram.

2.The appellant/Transport Corporation is the respondent in M.C.O.P.No.334 of 2012 on the file of Motor Accident Claims

Tribunal, District Court - II, Kanchipuram. The respondents filed the said claim petition claiming a sum of Rs.25,00,000/- as compensation for the death of one Pitchai Pandian, who died in the accident that took place on 16.01.2012.

3.According to the respondents, on the date of accident i.e., on 16.01.2012 at 15.00 hours, while the deceased was riding in his motorcycle along with one Devaiya Ebenesan as pillion rider, from Gugainallur to Thiruvalam, the bus belonging to the appellant-Transport Corporation, which came in the opposite direction, driven by its driver in a rash and negligent manner, dashed against the motorcycle and caused the accident. Due to the accident, the deceased Pitchai Pandian died on the way to hospital and the pillion rider sustained grievous injuries. Hence, the respondents have filed the above claim petition seeking compensation.

4.The appellant/Transport Corporation filed counter statement denying the averments made by the respondents and contended that the driver of the bus is not responsible for the accident. The deceased was solely responsible for the accident. The deceased, rider of the motorcycle did not possess valid driving license and did not wear helmet at the time of the accident. Therefore, the appellant is not liable to pay any compensation to the respondents.

5.Before the Tribunal, the 1st respondent, wife of the deceased, examined herself as P.W.1 and one Purushothaman, an eye-witness, was examined as P.W.2 and one Boopalan, employer of the deceased was examined as P.W.3 and marked eight documents as Exs.P1 to P8. On the side of the appellant/Transport Corporation, no oral and documentary evidence was let in.

6.The Tribunal 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.11,25,800/- as compensation to the respondents.

7.Against the said award dated 30.10.2014 made in M.C.O.P.No.334 of 2012, granting compensation to the respondents, the appellant/Transport Corporation has come out with the present appeal.

8.The learned counsel appearing for the appellant/Transport Corporation contended that the Tribunal erred in fixing negligence on the part of the driver of the bus belonging to the appellant/Transport Corporation merely based on the F.I.R. The Tribunal failed to note that there were two pillion riders in the motorcycle at the time of the accident and the respondents did not examine the pillion riders. He further contended that the respondents have not filed any document to prove the avocation and income of the deceased. In the absence of any material evidence, the Tribunal erred in fixing a sum of Rs.6,000/- per month as notional income of the deceased. The multiplier applied by the Tribunal is on the higher side. The amounts awarded by the Tribunal under different heads are excessive and prayed for setting aside the award of the Tribunal.

9.Heard the learned counsel appearing for the appellant/Transport Corporation and perused the materials available on record.

10.From the materials available on record, it is seen that the respondents have contended that while the deceased was riding in his motorcycle, the driver of the bus belonging to the appellant drove the bus in a rash and negligent manner and hit the motorcycle driven by the deceased and caused the accident. The respondents have examined P.W.2/Purushothaman, an eye-witness to the accident, who deposed in his evidence that the driver of the bus without giving any horn dashed against the deceased and caused the accident. They have marked Ex.P1/FIR and Ex.P6/charge sheet, which also reveals that the case has been registered and charge sheet has been filed against the driver of the bus. According to the appellant, the accident has not occurred due to rash and negligent driving by the driver of the bus belonging to the appellant/Transport Corporation, the deceased rode the motorcycle in an uncontrollable speed and invited the accident and at the time of the accident, more pillion riders travelled in the two wheeler driven by the deceased. The appellant has not examined the driver of the bus or any other independent witness to prove the said contention. The Tribunal considering the evidence of PW2/Purushothaman, Ex.P1/FIR and Ex.P6/charge sheet, came to the conclusion that the accident occurred due to rash and negligent driving by the driver of the bus belonging to the appellant/Transport Corporation. There is no error in the said finding of the Tribunal warranting interference by this Court.

11.As far as quantum of compensation is concerned, the respondents have contended that the deceased was working as a driver and also doing hotel business and was earning a sum of Rs.20,000/- per month. They have failed to prove the same. In the absence of any material evidence with regard to avocation and income of the deceased, the Tribunal has fixed a sum of Rs.6,000/- per month as notional income of the deceased. The accident is of the year 2012 and the monthly income fixed by the Tribunal is not excessive. The Tribunal fixed age of the deceased as 27 years at the time of accident based on the death certificate and post-mortem certificate and applied multiplier 17, which is proper. The Tribunal after considering both oral and documentary evidence let in by the respondents, has awarded a total sum of Rs.11,25,800/- as compensation to the respondents under different heads. In my considered opinion, the compensation awarded by the Tribunal is just and reasonable and hence it does not warrant any interference by this Court.

12. In the result, this Civil Miscellaneous Appeal is dismissed and the sum of Rs.11,25,800/- awarded by the Tribunal as compensation to the respondents/claimants, along with interest and costs is confirmed. The appellant/Transport Corporation is directed to deposit the entire 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 1, 3 and 4/ claimants 1, 3 and 4 are permitted to withdraw their respective share of the award amount, on the basis of apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn. The share of the minor claimant/2nd respondent herein is directed to be deposited in any one of the Nationalised Banks till the minor attains majority. The 1st respondent being the mother of the 2nd respondent is permitted to withdraw the accrued interest once in three months for the welfare of the minor. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

kj

To
1.The District Judge - II
Motor Accident Claims Tribunal
Kanchipuram.

CC:The Section Officer
VR Section,High Court,Madras.

+1cc to Mr.S.Sairaman, Standing Counsel for TNCTC SR.102444

GJ(CO)
CB(10/06/2020)