

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.07.2019

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.539 of 2013

and

M.P.No.1 of 2013

The Managing Director,
Tamil Nadu State Transport
Corporation Limited, Head Office,
37, Mettupalayam Road,
Coimbatore.

... Appellant/2nd Respondent in
Tribunal below

Vs

1. K.Haresh Khanjunezo
2. K.Amresh Khan Jaj
3. Ameena Bivi
4. Sinkarakkannan
(R4 not necessary party
hence he is given up)

... Respondents/Petitioner 1 to 3 and
1st Respondent in Tribunal below

Appeal under Section 173 of the Motor Vehicles Act against the judgment and decree dated 29.02.2012 made in MCOP No.126 of 2009 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge), Pollachi.

For Appellant : Mr.Ponram Rajaa

For Respondents : Mr.M.N.Balakrishnan (for R1 to R3)
R4 - Given up

JUDGMENT

This appeal is preferred by the appellant Transport Corporation against the award of a sum of Rs.4,62,000/- towards compensation to the claimants, on account of the death of one Kajamoideen in a motor vehicle accident.

2.The case in brief, is as follows:

On the fateful day, i.e. on 04.11.2008, the deceased Kajamoideen was riding TVS-XL Super motorcycle bearing Registration No.TN38 B 5763 along with his wife deceased Nazeera as pillion rider from East to West on the Udumalai Road. At

about 10.30 a.m. when they were nearing Karupparayan Kovil, the bus belonging to the appellant Transport Corporation bearing Reg.No.TN-38-N-1075 driven by the 4th respondent herein, came from the same direction in a rash and negligent manner and hit the motorcycle from behind. Due to the said impact, both the rider and pillion rider of the motorcycle sustained grievous injuries all over the body and subsequently they succumbed to the injuries. The legal heirs of the deceased filed a claim petition before the Tribunal. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.4,62,000/- with interest at the rate of 7.5% per annum from the date of petition.

3.Challenging the same, the appellant Transport Corporation has filed the present Civil Miscellaneous Appeal.

4.The learned counsel for the appellant has submitted that the finding of the Tribunal in respect of negligence is contrary to the evidence available on record. He also submitted that no police officer was examined to prove the negligence on the part of the appellant's driver. With regard to quantum, the learned counsel submitted that no documentary evidence was produced to prove the occupation and income of the deceased and hence, the compensation so awarded by the Tribunal is excessive and exorbitant and the same has to be reduced substantially.

5.On the other hand, the learned counsel for the respondents 1 to 3 /claimants submitted that the Tribunal, based on the oral and documentary evidence, has rightly concluded that the accident had occurred only due to the negligent driving of the driver of the bus belonging to the appellant Transport Corporation and accordingly fastened the liability on both the fourth respondent and the appellant Transport Corporation, jointly and severally and hence the same warrants no interference.

6.Heard the learned counsel appearing for the appellant and the learned counsel for the claimants and perused the materials available on record carefully and meticulously.

7.The son of the deceased was examined as P.W.1 and the driver of the bus was examined as R.W.1 before the Tribunal. Since there was no eye-witness to the accident, on a perusal of the rough sketch marked as Ex.P4, the Tribunal came to know that the offending bus was stopped 75 feet away from the scene of occurrence. The said fact was also admitted by the driver of the bus in the cross-examination. In these circumstances, the Tribunal came to the conclusion that the accident had occurred only due to the negligent driving of the driver of the appellant Transport Corporation's bus, which finding this Court is not inclined to interfere.

8. In respect of the quantum of compensation, considering the fact that the age of the deceased-Kaja Moideen was 59 years and he was hale and healthy at the time of accident and capable of earning by way of doing agriculture and dry fish business, the Tribunal has fixed the monthly income of the deceased at Rs.6,000/-. After deducting 1/3rd of the amount towards personal expenses of the deceased and adopting the multiplier of 9, the Tribunal has arrived at the loss of income at Rs.4,32,000/-. The Tribunal has also awarded a sum of Rs.10,000/- towards funeral expenses and Rs.20,000/- towards loss of love and affection. The Tribunal has considered the materials and evidence properly and has awarded compensation towards the above heads and hence the same need not be interfered with by this Court.

9. In the result, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected miscellaneous petition is closed. The appellant Transport Corporation is directed to deposit the award amount with interest and costs, as ordered by the Tribunal, after deducting the amount if any 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 claimants are permitted to withdraw their respective shares, as apportioned by the Tribunal, on making proper application.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

To
1. The Subordinate Judge,
Motor Accidents Claims Tribunal,
Pollachi

2. The Section Officer,
VR Section, Madras High Court.

+1 cc to Mr.MN.Balakrishnan, Advocate,sr60859

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krd 22/6

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