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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.02.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.863 of 2018

and

C.M.P.No.7115 of 2018

The Managing Director,
Tamilnadu State Transport Corporation (Coimbatore) Limited,
37, Mettupalayam Road,
Coimbatore. ... Appellant/2nd Respondent

Vs.

1.Anbu
2.Swaminathan
3.Ananthakumar
4.Sathishkumar
5.Sasikumar
6.Dineshkumar ..Respondents 1 to 6/Petitioners
7.Rajkumar ..7th Respondent/1st Respondent
(R.7 is not necessary party hence given up)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 10.08.2015 made in M.C.O.P.No.595 of 2011 on the file of Motor Accident Claims Tribunal, Chief Judicial Magistrate, Tirupur.

For Appellant : Mr.V.Udayakumar

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant-Insurance Company, challenging the award dated 10.08.2015 made in M.C.O.P.No.595 of 2011 on the file of Motor Accident Claims Tribunal, Chief Judicial Magistrate, Tirupur.

2.The appellant/Transport Corporation is 2nd respondent in M.C.O.P.No.595 of 2011 on the file of Motor Accident Claims Tribunal, Chief Judicial Magistrate, Tirupur. The respondents 1 to 6 filed the said claim petition, claiming a sum of Rs.5,00,000/- as compensation for the death of one Marial, who died in the accident that took place on 23.04.2011.



3.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident has occurred due to rash and negligent driving by the driver of the bus, the 7th respondent herein belonging to the appellant/Transport Corporation and directed both the 7th respondent as well as appellant/Transport Corporation jointly or severally to pay a sum of Rs.3,74,000/- as compensation to the respondents 1 to 6.

4.Against the said award dated 10.08.2015 made in M.C.O.P.No.595 of 2011, granting compensation to the respondents 1 to 6, the appellant/Transport Corporation has come out with the present appeal.

5.The learned counsel appearing for the appellant contended that the Tribunal failed to take note of the fact that rough sketch was not marked to prove the negligence on the part of the driver of the bus belonging to the appellant-Transport Corporation. The person who lodged the complaint was not examined. The Tribunal ought to have rejected the evidence of P.W.2, eye-witness and ought to have accepted the evidence of R.W.1, the driver of the bus while deciding the negligence on the part of the driver of the appellant's bus. The Tribunal failed to consider the marital status of respondents 1 to 6 while awarding compensation. The respondents 1 to 6 failed to prove the age, avocation and income of the deceased. The total compensation awarded by the Tribunal is excessive and prayed for setting aside the award of the Tribunal.

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

7.From the materials on record, it is seen that it is the contention of the respondents 1 to 6 that due to rash and negligent driving by the 7th respondent/driver of the bus, the accident has occurred. To prove the same, they have examined P.W.2-eye witness. On the other hand, it is the contention of the appellant that in the running bus, the deceased tried to change her seat from the back seat of the bus to the front seat and fell down and died. To prove the same, the appellant examined 7th respondent/driver of the bus as R.W.1. The Tribunal considering the evidence of P.W.2, eye witness and R.W.1, accepted the evidence of P.W.2 on the ground that only when the bus is driven in a rash and negligent manner, the passenger of the bus may fall down from the bus and not when the bus is driven cautiously. There is no error in the said finding of the Tribunal warranting interference by this Court.

8.As far as the quantum of compensation is concerned, the Tribunal considering the age and avocation of the deceased,



granted compensation under different heads which are not excessive warranting interference by this Court.

9. In the result, this Civil Miscellaneous Appeal is dismissed and sum of Rs.3,74,000/- awarded by the Tribunal as compensation to the respondents 1 to 6/claimants, along with interest and costs is confirmed. Both the 7th respondent as well as the appellant/Transport Corporation jointly or severally directed to deposit the award amount with interest and costs, less the amount already deposited, if any, within a period six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.595 of 2011. On such deposit, the respondents 1 to 6 are permitted to withdraw their 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. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-III)

//True copy//

Sub Assistant Registrar

gsa

To

The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Tirupur.

Copy To : The Section Officer,
VR Section, High Court,
Madras.

+1cc to Mr.V.Udayakumar, Advocate SR.No.12489

C.M.A.No.863 of 2018
and
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NRJK(CO)
GMY(11/12/2019)