

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.08.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.No.3047 of 2019

and

C.M.P.No.16684 of 2019

The Managing Director,
Tamil Nadu State Transport Corporation Ltd,
Kumbakonam. ... Appellant/Respondent

Vs.

1.Veeramani

2.Purachiamni

3.Dhivya

4.Udhaya ... Respondents/Petitioners

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 04.03.2019, made in M.C.O.P.No.2536 of 2015, on the file of the Motor Accident Claims Tribunal, Principal District Court, Cuddalore.

For Appellant : Mr.D.Venkatachalam

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant-Transport Corporation, challenging the award dated 04.03.2019, made in M.C.O.P.No.2536 of 2015, on the file of the Motor Accident Claims Tribunal, Principal District Court, Cuddalore.

2.The appellant/Transport Corporation is respondent in M.C.O.P.No.2536 of 2015, on the file of the Motor Accident Claims Tribunal, Principal District Court, Cuddalore. The respondents filed the said claim petition, claiming a sum of Rs.50,00,000/- as compensation for the death of one Ramki, who

died in the accident that took place on 25.06.2008. The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred due to rash and negligent riding by the rider of the motorcycle in which the deceased was travelling as pillion rider as well as the driver of the bus belonging to the appellant/Transport Corporation and fixed 20% contributory negligence on the part of the rider of motorcycle and 80% contributory negligence on the part of the driver of the appellant/Transport Corporation and awarded a sum of Rs.9,40,000/- as compensation and directed the appellant/Transport Corporation to pay a sum of Rs.7,52,000/- i.e., 80% of the award amount, as compensation to the respondents. Challenging the said award dated 04.03.2019, made in M.C.O.P.No.2536 of 2015, the appellant/Transport Corporation has come out with the present appeal challenging the liability fastened on them as well as the quantum of compensation awarded by the Tribunal.

3.The learned counsel appearing for the appellant contended that there is no oral and documentary evidence placed before the Tribunal, regarding the age, occupation and income of the deceased. The Tribunal ought not to have fixed negligence on the driver of the bus as per on the evidence of PW1, who is the father of the deceased and interested witness. The Tribunal has also not considered the FIR which registered against the rider of the motorcycle, he had driven the vehicle in a rash and negligent manner and he dashed the rear wheel of the bus. Further, the interest fixed by the Tribunal at the rate of 8% per annum is also on the higher side. It is also contended that when the rider of the motorcycle had driven the vehicle under the influence of the alcohol, the Tribunal has committed 20% contributory negligence on the rider of the motorcycle. Hence, the appellant sought for setting aside the award of the Tribunal.

4.Heard Mr.D.Venkatachalam, learned counsel appearing for the appellant/Transport Corporation and perused the materials available on record.

5.On perusal of records, it is observed that the accident occurred on 25.02.2008 at about 14.55 hours, while the deceased was travelling as a pillion rider in the Yamaha motorcycle bearing Reg.No.TN-31-C-0273 which was driven by his friend one Prabukumar on the Chidambaram SP Koil Street, when they nearing tasmac shop opposite towards east to west from the left side of the road. At that time the respondent's TNSTC bus bearing Reg.No.TN-49-N-1308 which was driven by its driver with high speed in a rash and negligent manner, without blowing horn and hit against the deceased travelling motorcycle and caused the

accident, due to the accident the deceased was thrown out from the motorcycle and fell down on the road and sustained grievous injuries over his head and all over the vital part of the body. Immediately after the accident the deceased was admitted in the Government Hospital, Chidambaram. The Doctor who was examined the deceased confirmed the death. The respondent/Transport Corporation denied the mode of accident as well as the claim made by the claimants.

6.The Tribunal has observed the evidence and documents by verifying the FIR and also the admission of PW1 in the cross examination that at the time of the alleged accident, the rider of the two wheeler and the deceased did not wear the helmet. In order to prove the rash and negligent, on the side of the petitioners, one Asaikumar, who is the eyewitness to the occurrence was examined as PW2. On the side of the respondent i.e. appellant herein, RW1 was examined who deposed that the pillion rider was in an intoxicated mood came behind the respondent bus and dashed against the pedestrian and fell down. So after observing these aspects, the Tribunal has fixed 20% liability on the part of the rider of the two wheeler in which the deceased was travelling as pillion rider and fixed 80% liability on the part of the driver of respondent's bus which is very much proper and reasonable. Hence does not require any interference by this Court.

7.As far as quantum of compensation is concerned the deceased was aged 19 years at the time of accident. The respondents in the claim petition have stated that their deceased son was a catering worker and was earning a sum of Rs.20,000/- per month. The Tribunal by considering the year of the accident i.e. 2008, age and avocation of the deceased has fixed the monthly income of the deceased at Rs.6,000/- per month, applied multiplier '18' deducted 50% towards personal expenses as the deceased was a bachelor, added 40% towards future prospects and awarded a sum of Rs.9,07,200/- towards loss of dependency which is proper and not excessive. The amounts awarded by the Tribunal under all other heads are also not and does not require any modification.

8.In the result, this Civil Miscellaneous Appeal is dismissed and sum of Rs.9,40,000/- awarded by the Tribunal as compensation to the respondents/claimants, along with interest and costs is confirmed. No costs. Consequently, connected Miscellaneous Petition is closed.

9.The appellant/Transport Corporation is directed to deposit 80% of the modified award amount (i.e. Rs.7,52,000/-) along

with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the respondents are permitted to withdraw the 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, by filing necessary applications before the Tribunal.

Sd/-

Assistant Registrar(CSV)

//True Copy//

Sub Assistant Registrar

mtl

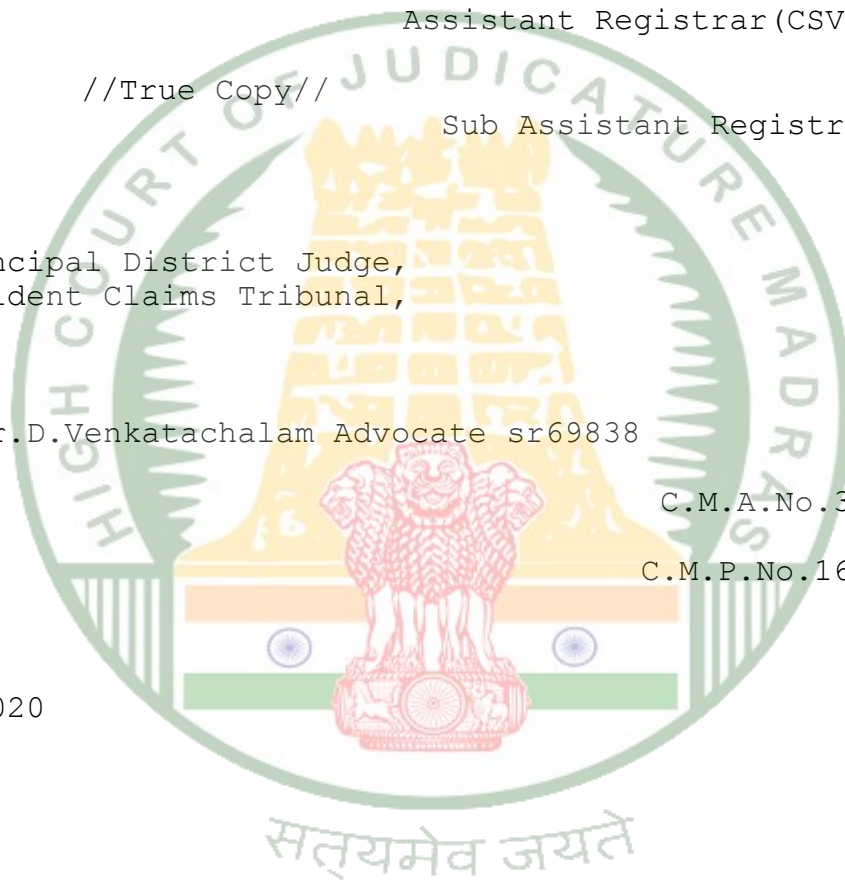
To

1.The Principal District Judge,
Motor Accident Claims Tribunal,
Cuddalore.

+lcc to Mr.D.Venkatachalam Advocate sr69838

C.M.A.No.3047 of 2019
and
C.M.P.No.16684 of 2019

ppa(co)
aa06/02/2020



WEB COPY