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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.04.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2091 of 2017

and

C.M.P.No.11075 of 2017

Tamil Nadu State Transport
Corporation Limited,
Represented by its Managing Director
Having Office at New Railway Station Road,
Kumbakonam. ... Appellant/ Respondent

Vs.

1.Rajathi

2.Sathishkumar

3.Sathya ... Respondents/ Petitioners

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 19.08.2014 made in M.C.O.P.No.179 of 2013 on the file of Motor Accident Claims Tribunal, Principal District and Sessions Court, Tiruvarur.

For Appellant	: Mr.D.Venkatachalam
For RR1 to 3	: Mr.R.Raja Vignesh
	for Mr.V.Vargees Amal Raja

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Transport Corporation, challenging the award dated 19.08.2014 made in M.C.O.P.No.179 of 2013 on the file of Motor Accident Claims Tribunal, Principal District and Sessions Court, Tiruvarur.

2.The appellant/Transport Corporation is respondent in M.C.O.P.No.179 of 2013 on the file of Motor Accident Claims Tribunal, Principal District and Sessions Court, Tiruvarur. The respondents 1 to 3 filed the said claim petition, claiming a sum of Rs.20,00,000/- as compensation for the death of one Thamaraiselvan, who died in the accident that took place on 26.06.2011. The Tribunal, considering the



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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-Transport Corporation to pay a sum of Rs.6,80,000/- as compensation to the respondents. Against the said award dated 19.08.2014 made in M.C.O.P.No.179 of 2013, granting compensation to the respondents, the appellant-Transport Corporation has come out with the present appeal.

3.The learned counsel appearing for the appellant-Transport Corporation contended that the Tribunal erred in relying on the evidence of PW1 who is the mother of the deceased who is not an eyewitness to the accident. The Tribunal erred in relying on the evidence of PW2 alleged eyewitness and failed to consider that evidence of PW2 was not corroborated by any other oral and documentary evidence. FIR was lodged by the pillion rider against the deceased. In the FIR, the pillion rider has stated that the deceased tried to overtake the bus belonging to the appellant in a rash and negligent manner and due to that, the accident has occurred. The respondents have not proved the age and income of the deceased. In the absence of any material, the notional income fixed by the Tribunal is excessive. The deceased was aged 24 years. The Tribunal instead of granting 40% enhancement, granted 50% enhancement towards future prospects and prayed for setting aside the award of the Tribunal.

4.Per contra, the learned counsel appearing for the respondents contended that the respondents have proved the negligence on the part of the driver of the bus by examining PW2 an independent eyewitness. Ex.P1/FIR was marked to show that the case has been registered against the driver of the bus. The appellant failed to examine any eyewitness to prove their contention that the accident has occurred only to due to rash and negligent driving by the deceased and prayed for dismissal of the appeal.

5.Heard the learned counsel appearing for the appellant-Transport Corporation as well as learned counsel appearing for the respondents and perused all the materials on record.

6.From the materials available on record, it is seen that the respondents have contended that the driver of the bus suddenly turned to right side and the deceased who was coming behind the bus dashed on the back side of the bus. According to the respondents, the accident has occurred only due to rash and negligent driving by the driver of the bus. To prove the same, the respondents have examined PW2 eyewitness and marked Ex.P1 - FIR which was registered only



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against the driver of the bus. The appellant has contended that based on the complaint given by the pillion rider the FIR was registered against the deceased as the accident has occurred due to rash and negligent driving by the deceased. The appellant has not produced the alleged complaint or FIR alleged to have been registered against the deceased before the Tribunal. As rightly contended by the learned counsel appearing for the respondents, the appellant did not examine any independent witness to prove their contention that the accident has occurred only due to rash and negligent act of the deceased. The Tribunal considering all the above materials, held that the accident has occurred only due to rash and negligent driving by the driver of the bus. There is no error in the said finding of the Tribunal warranting interference by this Court.

7.As far as quantum of compensation is concerned, the respondents have contended that the deceased was working as a carpenter, mason and was earning a sum of Rs.15,000/- per month. They have failed to substantiate their contention. In the absence of any material, the Tribunal fixed a sum of Rs.6,000/- per month as notional income of the deceased and granted 50% enhancement towards future prospects. The accident is of the year 2011. The amount fixed by the Tribunal as notional income is meagre and in view of the same, the enhancement granted by the Tribunal towards future prospects is not interfered with. The total compensation awarded by the Tribunal under different heads are just compensation and are not interfered.

8.In the result, this Civil Miscellaneous Appeal is dismissed and the sum of Rs.6,80,000/- 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 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, to the credit of M.C.O.P.No.179 of 2013. On such deposit, the respondents 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 by filing necessary applications before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar



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To

1.The Principal District and Sessions Judge,
Motor Accident Claims Tribunal,
Tiruvarur.

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

+lcc to Mr.D.Venkatachalam , Advocate SR.No. 38908

+lcc to Mr.V.Vargees Amal Raja, Advocate SR.No. 38544

C.M.A.No.2091 of 2017
and

C.M.P.No.11075 of 2017

A.SK(30/09/2019)