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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1140 of 2015

and

M.P.No.1 of 2015

Branch Manager,
United India Insurance Company Limited,
Branch Office, Kumar Complex,
Thiruchengodu Town & Taluk,
Namakkal District.

.. Appellant/3rd Respondent

Vs.

1.Anbumani

2.Minor.A.Poonthamil

(Minor 2nd respondent represented by
her mother, Anbumani, 1st respondent)

3.Valliammal

...Respondents 1 to 3/Petitioners

4.The Managing Director,

Tamil Nadu State Transport Corporation (Salem),
No.12, Ramakrishna Road,
Salem - 7.

...4th Respondent/1st Respondent

5.S.Vijaya

(set exparte before the Tribunal)

.. Respondent/2nd Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 01.12.2014 made in M.C.O.P.No.335 of 2010 on the file of the Motor Accidents Claims Tribunal, Principal District Court, Krishnagiri.

For Appellant : Mr.S.Arunkumar

For RR 1 to 3 : Mr.C.Munusamy

For R4 : Mr.D.Venkatachalam

For R5 : No appearance



J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award dated 01.12.2014 made in M.C.O.P.No.335 of 2010 on the file of the Motor Accidents Claims Tribunal, Principal District Court, Krishnagiri.

2. The appellant is the 3rd respondent in M.C.O.P.No.335 of 2010 on the file of the Motor Accidents Claims Tribunal, Principal District Court, Krishnagiri. The respondents 1 to 3 filed the said claim petition, claiming a sum of Rs.40,00,000/- as compensation for the death of one R.Arunachalam, who died in the accident that took place on 11.05.2008.

3. According to the respondents 1 to 3/claimants, on 11.05.2008 at about 04.10 P.M., while the deceased was boarding into the rear foot board of the bus belonging to the 5th respondent bearing Registration No.TN 34 E 3699, the driver of the bus belonging to the 4th respondent bearing Registration No.TN 27 N 1697 came reversely in a rash and negligent manner and dashed against the backside of the bus belonging to the 5th respondent, in which the deceased was boarding into the rear foot board and caused the accident. Due to the said accident, the deceased and others sustained grievous injuries and the said R.Arunachalam succumbed to injuries in the Hospital. Therefore, the respondents 1 to 3, being the wife, daughter and mother of the deceased filed the said claim petition claiming a sum of Rs.40,00,000/- as compensation against the respondents 4, 5 and appellant, being the owner of both the buses bearing Registration Nos. TN 27 N 1697 and TN 34 E 3699 and the insurer of the bus belonging to the 5th respondent bearing Registration No.TN 34 E 3699 respectively.

4. The 5th respondent being the owner of the bus bearing Registration No.TN 34 E 3699 remained exparte before the Tribunal.

5. The 4th respondent-Transport Corporation filed counter statement and denied all the averments made by the respondents 1 to 3/claimants. According to 4th respondent-Transport Corporation, the driver of the bus belonging to the 5th respondent came reversely in a rash and negligent manner and dashed against the bus belonging to the 4th respondent-Transport Corporation and caused the accident. Therefore, the accident occurred only due to negligent driving by the driver of the bus belonging to the 5th respondent. The respondents 1 to 3/claimants have to prove the age, avocation and income of the deceased by producing valid documents. In any event, the quantum of compensation claimed by the respondents 1 to 3/claimants is highly excessive and prayed for dismissal of the claim petition.



6. The appellant-Insurance Company filed counter statement and denied all the averments made by the respondents 1 to 3/claimants. According to the appellant-Insurance Company, the 5th respondent's bus bearing Registration No.TN 34 E 3699 was not insured with the appellant. On the date of accident, while the driver of the 5th respondent's bus was driving the same cautiously responding to the conductor's signal, the driver of the bus belonging to the 4th respondent-Transport Corporation bearing Registration No.TN 27 N 1697, drove the bus reversely in a rash and negligent manner without noticing the 5th respondent's bus and dashed against the 5th respondent's bus and caused the accident. Therefore, the accident occurred only due to rash and negligent driving by the driver of the bus belonging to the 4th respondent-Transport Corporation. On the date of accident, the driver of the 5th respondent's bus was not possessing valid driving license. The respondents 1 to 3/claimants have to prove the age, avocation and income of the deceased by producing valid documents. In any event, the quantum of compensation claimed by the respondents 1 to 3/claimants is extremely high and prayed for dismissal of the claim petition.

7. Before the Tribunal, on behalf of the respondents 1 to 3/claimants, the first respondent examined herself as P.W.1 and one Jayaprakash, who was the co-worker of the deceased was examined as P.W.2 and 10 documents were marked as Exs.P1 to P10. On behalf of the appellant, one Ravi was examined as R.W.1 and two documents were marked as Exs.R1 and R2. No oral or documentary evidence was let in on the side of the 4th respondent.

8. The Tribunal, considering the pleadings, oral and documentary evidence, held both the drivers of the buses, belonging to the 4th and 5th respondents are equally responsible for the accident and awarded a sum of Rs.33,01,000/- as compensation to the respondents 1 to 3/claimants and directed the 4th respondent and appellant-Insurance Company to pay 50% each of the compensation amount.

9. Challenging the said award dated 01.12.2014 made in M.C.O.P.No.335 of 2010, the appellant-Insurance Company has come out with the present appeal.

10. The learned counsel appearing for the appellant/Insurance Company contended that the Tribunal failed to see that the accident has occurred only due to rash and negligent driving by the driver of the bus belonging to the 4th respondent-Transport Corporation bearing Registration No.TN 27 N 1697. The F.I.R. was registered only against the driver of the bus belonging to the 4th respondent-Transport Corporation



alleging entire negligence on the part of the 4th respondent-Transport Corporation. The evidence of P.W.1 and P.W.2 also reveal that accident has occurred only at the time of reversing the bus. The Tribunal erred in fixing the negligence on the part of the driver of the bus belonging to the 5th respondent and directed the appellant-Insurance Company being the insurer of the 5th respondent's bus to pay 50% of the compensation. The apportionment made by the Tribunal is not correct. The Tribunal has not deducted 1/3rd towards personal expenses of the deceased and prayed for setting aside the award passed by the Tribunal and for allowing the appeal.

11. Mr.D.Venkatachalam, learned counsel appearing for the 4th respondent-Transport Corporation contended that the driver of the 5th respondent's bus drove the same in a rash and negligent manner and dashed against the 4th respondent's bus and caused the accident. The Tribunal without considering the materials on record, erroneously fixed negligence on the part of the driver of the 4th respondent's bus merely based on F.I.R. 50% negligence fixed on the part of the driver of the 4th respondent-Transport Corporation bus is not correct. The Tribunal ought to have fixed entire negligence on the part of the driver of the 5th respondent's bus. The total compensation awarded by the Tribunal is highly excessive and prayed for setting aside the award passed by the Tribunal and for dismissal of the appeal.

12.Mr.C.Munusamy, learned counsel appearing for the respondents 1 to 3/claimants contended that the deceased was aged 52 years at the time of accident and was working as Headmaster in Government High School, Errabayanahalli and was earning a sum of Rs.40,000/- per month but the Tribunal fixed a meagre sum of Rs.31,778/- per month as notional income of the deceased. The Tribunal has not awarded any amount towards loss of estate. The amounts awarded by the Tribunal towards funeral expenses, loss of love and affection are meagre. The total compensation awarded by the Tribunal is not excessive and prayed for dismissal of the appeal.

13.Heard the learned counsel appearing for the appellant-Insurance Company as well as the learned counsel appearing for the 4th respondent-Transport Corporation and the learned counsel appearing for the respondents 1 to 3/claimants and perused the entire materials on record.

14.From the materials available on record, it is seen that P.W.1 has deposed that both the drivers of the bus are responsible for the accident. She denied the stand that only because the driver of the bus belonging to the 4th respondent-Transport Corporation reversed the bus in a rash and negligent



manner and dashed against the bus belonging to the 5th respondent, the accident has occurred. The F.I.R. was registered against the driver of the bus belonging to the 4th respondent-Transport Corporation. The driver of the bus belonging to the 4th respondent-Transport Corporation as well as the driver of the 5th respondent's bus were not examined. The contents of F.I.R. is not the sole criteria to fix negligence. The Tribunal has to consider the materials placed before it to decide the negligence. In the present case, the Tribunal has fixed the negligence equally on the drivers of the 4th respondent-Transport Corporation bus as well as the 5th respondent's bus. The Tribunal arrived at such a conclusion based on uncontraverted evidence of P.W.1. There is no error in the above finding of the Tribunal warranting interference by this Court.

15.As far as quantum of compensation is concerned, the Tribunal has not deducted 1/3rd towards personal expenses of the deceased from the compensation arrived for loss of dependency. The deceased was aged 52 years at the time of accident and was working as Headmaster in Government High School, Errabayanahalli and was earning a sum of Rs.40,000/- per month. The Tribunal has applied split multiplier for awarding compensation. The deceased was a Headmaster at the time of accident and after his retirement, the deceased would have worked in any of the Private School or Tuition centre and earned income by taking private Tuitions. The Tribunal failed to appreciate this fact while applying split multiplier. The Tribunal also has not granted any enhancement towards future prospects. Further the Tribunal has granted only a sum of Rs.60,000/- under conventional heads. For the above reasons, non deduction of 1/3rd towards personal expenses of the deceased is not interfered with. The Total compensation awarded by the Tribunal is just and reasonable and hence, the same is confirmed.

16. In the result, this Civil Miscellaneous Appeal is dismissed and sum of Rs.33,01,000/- awarded by the Tribunal as compensation to the respondents 1 to 3/claimants, along with interest and costs is confirmed. The 4th respondent and appellant-Insurance Company are directed to deposit a sum of Rs.16,50,500/- each being 50% of the award amount along with proportionate 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.335 of 2010 on the file of the Motor Accidents Claims Tribunal, Principal District Court, Krishnagiri. On such deposit, the respondents 1 and 3 are permitted to withdraw their respective share of the award amount, along with proportionate interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. The share of the minor 2nd respondent is directed to be



deposited in any one of the Nationalized Banks, till the minor 2nd respondent attains majority. On such deposit, the 1st respondent, being the mother of the minor 2nd respondent is permitted to withdraw the accrued interest once in three months for the welfare of the minor 2nd respondent. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

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To

1.Motor Accidents Claims Tribunal,
The Principal District Judge,
Krishnagiri.

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

+1cc to Mr.D.Venkatachalam, Advocate, S.R.No.4238
+1cc to Mr.S.Arunkumar, Advocate, S.R.No.5004
+1cc to Mr.R.Munusamy, Advocate, S.R.No.4310

C.M.A.No.1140 of 2015

BP(CO)
CB(15/07/2021)