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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1925 of 2013

and

M.P.No.1 of 2013

The Managing Director,
Tamil Nadu State Transport Corporation,
(CBE DVN II) Limited,
Chennai-malai Road, Erode. .. Appellant/2nd Respondent

Vs.

1.Masiriy Ammal ...Respondents 1 to 4/Petitioners

2.Appichi Gounder

3.Lakshmanan

4.Ramasamy

5.Ramesh ...5th Respondent/1st Respondent

6.Managing Director,
Tamil Nadu Transport Corporation Limited,
Aanthiyur, Bhavani Taluk. ..6th Respondent/3rd Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 18.09.2012 made in M.C.O.P.No.296 of 2011 on the file of the Motor Accidents Claims Tribunal, IV Additional District Court, Bhavani, Erode District.

For Appellant : Mr.K.J.Sivakumar

For RR 1, 3 & 4 : Mr.C.Kulanthaivel

R2 : Died

R5 & 6 : Given up.



J U D G M E N T

The matter is heard through "Video Conferencing".

2.This Civil Miscellaneous Appeal has been filed against the award dated 18.09.2012 made in M.C.O.P.No.296 of 2011 on the file of the Motor Accidents Claims Tribunal, IV Additional District Court, Bhavani, Erode District.

3.The appellant is the 2nd respondent in M.C.O.P.No.296 of 2011 on the file of the Motor Accidents Claims Tribunal, IV Additional District Court, Bhavani, Erode District. The respondents 1 to 4 filed the said claim petition claiming a sum of Rs.20,00,000/- as compensation for the death of one Nagaraj, who died in the accident that took place on 23.05.2011.

4.According to respondents 1 to 4, on 23.05.2011 at about 07.30 P.M., while the deceased Nagaraj was riding his TVS 50 motorcycle from East to West on the left side of the Kavundapadi - Gobi Main road near Ayyampalayam Pirivu, the driver of the bus belonging to appellant-Transport Corporation who was driving the bus from the opposite direction in a rash and negligent manner, hit against the TVS 50 rode by the deceased and caused the accident. In the accident, the said Nagaraj sustained fatal injuries and died on the spot. Therefore, the respondents 1 to 4 filed the said claim petition claiming a sum of Rs.20,00,000/- as compensation against the respondents 5, 6 and appellant-Transport Corporation.

5.The appellant-Transport Corporation filed counter statement and the same was adopted by the respondents 5 and 6. According to appellant, the 5th respondent-driver of the bus drove the bus from Gobi to Erode Main road slowly on the extreme left side cautiously and carefully without any rash and negligent driving. At about 07.30 P.M., while the driver of the bus was driving the bus near Ayyampalayam Pirivu, the deceased, who was under the influence of alcohol was riding his motorcycle in the oppsite direction, in a rash and negligent manner without following the road rules and regulation. On seeing the negligent act of the deceased, the 5th respondent stopped the bus on the extreme left side of the road to avoid the accident. But, the deceased himself fell down from his TVS 50 motorcycle due to his own carelessness. There was no negligence on the part of the 5th respondent-driver of the bus. The 5th respondent has not hit against the deceased. The 5th respondent drove the bus by observing the road traffic rules and regulations. The deceased only rode the motorcycle without observing the road traffic rules and regulations. Hence, the appellant is not liable to pay any compensation to the respondents 1 to 4. The Police case registered against the 5th respondent is without proper



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investigation and it has been registered based on the false complaint given. The F.I.R. was framed by suppressing the real facts. Mere filing of F.I.R. is not the only basis to fix negligence. The F.I.R. is false and created one. Therefore, the appellant is not liable to pay any compensation to the respondents 1 to 4. The respondents 1 to 4 have to prove the age, avocation and income of the deceased by producing valid documents. The respondents 1 to 4 have to prove that they are the legal heirs of the deceased by producing valid legal heirship certificate. On the date of accident, the deceased was not possessing valid driving license and the motorcycle rode by the deceased was not having valid Registration Certificate and other vehicular records. The owner and insurer of the TVS 50 rode by the deceased are necessary parties to the claim petition and they have to be impleaded as necessary parties. In any event, the quantum of compensation claimed by the respondents 1 to 4 are highly excessive and prayed for dismissal of the claim petition.

6. Before the Tribunal, the 1st respondent examined herself as P.W.1 and one Duraisamy, eyewitness to the accident was examined as P.W.2 and 6 documents were marked as Exs.P1 to P6. On behalf of the respondents 5, 6 and appellant, the 5th respondent was examined as R.W.1 and copy of the Final Report was marked as Ex.R1.

7. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the bus belonging to appellant-Transport Corporation and directed the appellant to pay a sum of Rs.6,65,000/- as compensation to the respondents 1 to 4 and dismissed the claim petition as against the 6th respondent.

8. Against the said award dated 18.09.2012 made in M.C.O.P.No.296 of 2011, the appellant has come out with the present appeal.

9. The learned counsel appearing for the appellant-Transport Corporation contended that at the time of accident, the deceased rode the TVS 50 motorcycle in a rash and negligent manner and without seeing the oncoming bus, suddenly came to the right hand side of the road and invited the accident. At the time of accident, the driver of the bus, 5th respondent herein was driving the bus cautiously with moderate speed. The Tribunal failed to consider the averments in the counter statement filed by the appellant and evidence of R.W.1/driver of the bus. The accident occurred only due to rash and negligent riding by the rider of the TVS 50 motorcycle, the deceased. Further the respondents 1 to 4 have failed to prove the avocation and income



of the deceased. The Tribunal erroneously fixed notional income of the deceased excessively at Rs.4,500/- per month. The deceased was aged 27 years at the time of accident, but the Tribunal erroneously applied multiplier '18'. The correct multiplier applicable as per the judgment of the Hon'ble Apex Court reported in 2009 (2) TNMAC 1 SC Supreme Court, [Sarla Verma & others Vs. Delhi Transport Corporation & another] is '17'. The Tribunal erroneously deducted 1/3rd towards personal expenses of the deceased instead of deducting 50% as the deceased was a bachelor at the time of accident. The total compensation awarded by the Tribunal is highly excessive and prayed for setting aside the award passed by the Tribunal.

10.Per contra, Mr.C.Kulanthaivel, learned counsel appearing for the respondents 1, 3 and 4 contended that the accident has occurred only due to the negligence on the part of the driver of the bus belonging to appellant. The respondents 1 to 4 proved the same by examining P.W.2/eyewitness. F.I.R. was registered only against the driver of the bus. The Tribunal considering the evidence of P.W.2, accepted the evidence of P.W.2 by giving valid reason. The deceased was aged 27 years at the time of accident, was working as Driver and was earning a sum of Rs.10,000/- per month. But the Tribunal fixed meagre sum of Rs.4,500/- per month as notional income of the deceased. The total compensation awarded by the Tribunal is not excessive and prayed for dismissal of the appeal.

11.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the respondents 1, 3 & 4 and perused the entire materials on record.

12.From the materials available on record, it is seen that it is the contention of the respondents 1 to 4 that while the deceased was riding the TVS 50 motorcycle, the driver of the bus belonging to appellant drove the bus in a rash and negligent manner and dashed against the TVS 50 and caused the accident. In the accident, the said Nagaraj sustained fatal injuries and died. To substantiate the said contention, the respondents 1 to 4 examined the 1st respondent as P.W.1 and one Duraisamy as P.W.2 and marked F.I.R. as Ex.P1, Ex.P2/Observation Mahazar, Ex.P3/copy of Rough Sketch, Ex.P4/copy of MVI report, Ex.P5/copy of Postmortem report and Ex.P6/Death Certificate. It is the contention of the appellant that deceased rode the TVS 50 in a rash and negligent manner and suddenly came to right hand side and invited the accident. The F.I.R. registered against the driver of the bus was closed as mistake of fact and referred charge sheet was filed by the appellant. To substantiate the said contention, the appellant examined the driver of the bus as R.W.1 and marked Ex.R1/Final Report filed by the Police. The Tribunal did not accept Ex.R1 as appellant did not produce any



material to show that the same was filed before the concerned Magistrate Court and the same was accepted by the said Court.

13. From the averments in the claim petition, it is seen that it is the contention of the respondents 1 to 4 that deceased was riding the TVS 50 motorcycle from East to West. From the rough sketch it is seen that the accident occurred on the Northern side of the road which is on the right hand side of the deceased and left hand side of the bus, which is coming in the opposite direction. The Tribunal has taken note of this fact, but did not properly appreciate the same and erroneously held that accident has occurred only due to rash and negligent driving by the driver of the bus belonging to appellant by accepting the evidence of P.W.2 and Ex.P1/F.I.R.

14. From the materials on record, it is seen that the complaint was lodged by one Ramasamy and according to the respondents 1 to 4, he is an eyewitness. But he was not examined but one Duraisamy was examined as P.W.2. Considering the materials on record and that the accident occurred on the Northern side of the road while the deceased was riding his TVS 50 motorcycle from East to West, this Court is of the view that accident has occurred only due to negligence on the part of the deceased. At the same time, the driver of the bus, who was driving the heavy vehicle, could have been cautious and avoided the accident. In view of the above materials, negligence is fixed equally on the deceased as well as driver of the bus. Hence, the appellant is liable to pay only 50% of the compensation awarded.

15. As far as quantum of compensation is concerned, it is the contention of the respondents 1 to 4 that the deceased was working as Driver and was earning a sum of Rs.10,000/- per month. But they failed to prove the said contention. In the absence of any material evidence with regard to avocation and income, the Tribunal fixed a sum of Rs.4,500/- per month as notional income of the deceased. The deceased was aged 27 years and was a bachelor at the time of accident. Instead of applying multiplier '17' and deducting 50% towards personal expenses, the Tribunal applied multiplier '18' and deducted 1/3rd towards personal expenses. In view of the meagre amount fixed by the Tribunal as notional income of the deceased, 1/3rd deducted by the Tribunal towards personal expenses and multiplier '18' applied is not interfered with. The appellant is directed to pay 50% of the amount awarded as compensation to the respondents 1 to 4.

16. In the result, this Civil Miscellaneous Appeal is partly allowed and a sum of Rs.6,65,000/- awarded by the Tribunal as compensation to the respondents 1 to 4, along with interest and



costs is confirmed. The appellant-Transport Corporation is directed to deposit 50% of the award amount, (i.e., Rs.3,32,500/-) along with interest and costs, less the amount if any already deposited, 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.296 of 2011 on the file of the Motor Accidents Claims Tribunal, IV Additional District Court, Bhavani, Erode District. On such deposit, the respondents 1, 3 and 4 are permitted to withdraw their respective share of the award amount as per the ratio of apportionment fixed by the Tribunal, along with proportionate interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. The learned counsel appearing for the respondents 1 to 4 submitted that the 2nd respondent died and the legal heirs of the deceased 2nd respondent are the respondents 1, 3 and 4 and they are already on record. Therefore, the respondents 1, 3 and 4 are permitted to withdraw the share of the deceased 2nd respondent along with interest and costs equally by making necessary applications before the Tribunal. The appellant-Transport Corporation is permitted to withdraw the excess amount if any already deposited to the credit of M.C.O.P.No.296 of 2011 before the Tribunal, than the award amount now determined by this Court. This appeal is dismissed as against the 6th respondent. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1.The IV Additional District Judge,
Motor Accidents Claims Tribunal,
Bhavani, Erode District.

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

+1cc to Mr.K.J.Siva Kumar, Advocate, S.R.No.40982

+1cc to Mr.C.Kulanthaivel, Advocate, S.R.No.41163

C.M.A.No.1925 of 2013

MP (CO)
CB(27/08/2021)