



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1983 of 2013

and

M.P.No.1 of 2013

The Managing Director
Tamil Nadu State Transport
Corporation Ltd.
Villupuram.

... Appellant/Respondent

Vs.

1.M.Rukmani
2.M.Karthavarayan @ Karthick
3.M.Sridhar

... Respondents/Claimants

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 15.11.2012 made in M.C.O.P.No.1638 of 2009 on the file of Motor Accident Claims Tribunal, IV Small Causes Court, Chennai.

For Appellant : Mr.K.J.Sivakumar

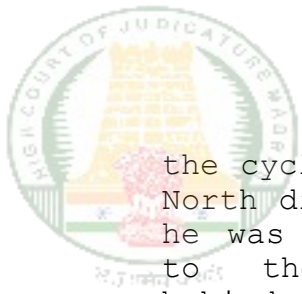
J U D G M E N T

This matter is heard through "Video-Conferencing".

This Civil Miscellaneous Appeal has been filed by the appellant/Transport Corporation challenging the award dated 15.11.2012 made in M.C.O.P.No.1638 of 2009 on the file of Motor Accident Claims Tribunal, IV Small Causes Court, Chennai.

2.The appellant/Transport Corporation is the respondent in M.C.O.P.No.1638 of 2009 on the file of Motor Accident Claims Tribunal, IV Small Causes Court, Chennai. The respondents filed the said claim petition claiming a sum of Rs.7,00,000/- as compensation for the death of one V.Masilamani Gounder, who died in the accident that took place on 23.05.2009.

3.According to the respondents, on the date of accident i.e., on 23.05.2009 at 8.00 hours, while the deceased was riding



the cycle in 1st Avenue Road, Ashok Nagar, Chennai, from South to North direction on the extreme Western side of the Road and when he was near V.G.P.Parijatham Apartments, the bus belonging to the appellant/Transport Corporation, which came from behind, driven by its driver in a rash and negligent manner, dashed against the deceased and caused the accident. In the accident, the deceased Masilamani Gounder sustained fatal injuries and died on the way to hospital. Hence, the respondents have filed the above claim petition claiming compensation against the appellant.

4.The appellant/Transport Corporation filed counter statement denying the averments made by the respondents and contended that the driver of the bus is not responsible for the accident. The accident has occurred due to the negligence of the deceased and hence, the deceased is solely responsible for the accident. Therefore, the appellant is not liable to pay any compensation to the respondents. The appellant has also denied the age, avocation and income of the deceased. In any event, the compensation claimed by the respondents is excessive and prayed for dismissal of the claim petition.

5.Before the Tribunal, the 1st respondent, wife of the deceased, examined herself as P.W.1, one M.Jayaraman, an eye-witness to the accident, was examined as P.W.2 and one Karthavarayan @ Karthik, son of the deceased, the 2nd respondent herein, was examined as P.W.3 and four documents were marked as Exs.P1 to P4. The appellant/Transport Corporation examined one P.Subramaniyan, the driver of the bus as R.W.1 and did not let in any documentary evidence.

6.The Tribunal considering the 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 to pay a sum of Rs.3,38,000/- as compensation to the respondents.

7.Against the said award dated 15.11.2012 made in M.C.O.P.No.1638 of 2009, granting compensation to the respondents, the appellant/Transport Corporation has come out with the present appeal.

8.The learned counsel appearing for the appellant/Transport Corporation contended that the Tribunal erred in fixing negligence on the part of the driver of the bus belonging to the appellant/Transport Corporation merely based on Ex.P1/F.I.R. The Tribunal failed to consider that no Police Officer was examined to prove the negligence on the part of the driver of the bus. The learned counsel further contended that the respondents have



the time of accident based on Ex.P4/post-mortem certificate, applied multiplier '8' as per II Schedule of the Motor Vehicles Act, deducted 1/3rd towards personal expenses and awarded a sum of Rs.2,88,000/- towards loss of dependency. The Tribunal failed to award any amount towards future prospects. The deceased was aged 60 years at the time of accident. As per the judgment of the Hon'ble Apex Court reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and others], the appellants are entitled to 10% enhancement towards future prospects. Further, a sum of Rs.25,000/- and Rs.5,000/- awarded by the Tribunal towards loss of consortium to the 1st respondent and funeral expenses respectively are meagre. The Tribunal has also not awarded any amount towards loss of earning power. In view of the above, the total sum of Rs.3,38,000/- awarded by the Tribunal as compensation to the respondents under different heads, is not excessive warranting interference by this Court.

12. In the result, this Civil Miscellaneous Appeal is dismissed and the sum of Rs.3,38,000/- awarded by the Tribunal as compensation to the respondents along with interest and costs is confirmed. The appellant/Transport Corporation is directed to deposit the entire 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. 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. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar (CS-I)

//True copy//

Sub Assistant Registrar

kj

To

1.IV Judge
Motor Accident Claims Tribunal
Small Causes Court, Chennai.



2.The Section Officer
VR Section
High Court
Madras.

+1cc to Mr.K.J.Sivakumar, Advocate SR.No.40978

C.M.A.No.1983 of 2013
and
M.P.No.1 of 2013

SV (CO)
GMY (24/08/2021)