

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No. 2856 of 2013
and M.P. No. 1 of 2013

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

Vs.

1.Chinnappan
2.Johnpaul
3.Minor Jackelin Mari
(Rep. By her father and natural guardian,
1st respondent) ... Respondents/Petitioners

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the award dated 04.07.2012 made in M.C.O.P. No. 448 of 2009, on the file of the XV Additional Judge, City Civil Court, (Motor Accident Claims Tribunal), Chennai.

For Appellant : Mr. K.J. Sivakumar

For Respondents: Mr. F. Terry Chellaraja
for M/s. M. Malar

J U D G M E N T

This appeal is filed against the award dated 04.07.2012 made in M.C.O.P. No. 448 of 2009, on the file of the XV Additional Judge, City Civil Court, (Motor Accident Claims Tribunal), Chennai.

2.The appellant is the respondent in M.C.O.P. No. 448 of 2009, on the file of the XV Additional Judge, City Civil Court, (Motor Accident Claims Tribunal), Chennai. The respondents filed the said claim petition, claiming a sum of Rs.6,00,000/- as compensation for the death of one Bernath, who died in the accident that took place on 11.08.2008.

3.According to the respondents, on the date of accident viz., 11.08.2008, at about 15.30 hours, while the deceased was

standing in G.S.T. Road near Vandalur Gate, the Driver of the Bus bearing Registration No. TN-32-N-2304 belonging to the appellant-Transport Corporation drove the vehicle in a rash and negligent manner and came at high speed from Villupuram to Chennai and dashed against the deceased and caused the accident. Due to the said accident, the deceased succumbed to injuries. Hence, the respondents filed the present claim petition, claiming compensation against the appellant-Transport Corporation.

4.The appellant-Transport Corporation filed counter statement and denied all the averments made by the respondents in the claim petition. According to the appellant, on 11.08.2008, the appellant's Bus bearing Registration No. TN-32-2304 completed its scheduled trips without any accident. On 12.08.2008, the said vehicle was put to Motor Vehicle Test with objection. The Police after due investigation, has registered case against the deceased. The departmental enquiry also finds no fault on the driver of the said Bus. The accident is not connected with this Bus and the appellant is not liable to pay compensation to the respondents. In any event, the total compensation claimed by the respondents are excessive and prayed for dismissal of the claim petition.

5.Before the Tribunal, the 1st respondent examined himself as P.W.1, examined one eye-witness as P.W.2 and employer of the deceased was examined as P.W.3 and marked 8 documents as Exs.P1 to P8. The appellant examined the Driver of the Bus as R.W.1 and marked one document as Ex.R1.

6.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident has 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.9,95,000/- as compensation to the respondents.

7.Against the said award dated 04.07.2012 made in M.C.O.P. No. 448 of 2009, 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 the negligence on the part of the driver of the Bus. The deceased who was working in the road without minding the on coming Bus, fell down and invited the accident. In any event, the Tribunal ought to have fixed contributory negligence on the part of the

deceased. The Tribunal erred in fixing the notional income of the deceased at Rs.7,500/- per month and applied multiplier '16', instead of '12'. The total compensation awarded by the Tribunal is excessive and prayed for setting aside the award.

9.Per contra, the learned counsel appearing for the respondents submitted that the respondents filed appeal in C.M.A. No. 2910 of 2018, seeking enhancement of the compensation. This Court by the order dated 19.12.2018, dismissed the appeal, confirming the award of the Tribunal, directing the appellant-Transport Corporation to deposit the entire award amount along with interest and costs within a period of twelve weeks from the date of receipt of copy of the said judgment and permitted the respondents to withdraw the amount deposited by the appellant-Transport Corporation and hence, prayed for dismissal of the present appeal.

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

11.From the materials on record, it is seen that it is the contention of the respondents that while the deceased was cleaning the road, the driver of the Bus belonging to the appellant-Transport Corporation drove the Bus in a rash and negligent manner and dashed against the deceased and caused the accident. The deceased died due to the injuries sustained by him in the accident. To substantiate the said claim, the respondents examined P.W.2 - eye witness who was working along with the deceased and marked FIR as Ex.P1. On the other hand, it is the contention of the appellant that accident did not occur due to rash and negligent driving by the driver of the Bus belonging to the appellant-Transport Corporation, but the deceased who was working without minding the on coming vehicle and fell down on the road and invited the accident. To substantiate the said contention, the appellant examined driver of the Bus as R.W.1 and marked Ex.R1, the judgment passed by the Criminal Court, wherein R.W.1 was acquitted. The Tribunal considered Ex.R1 and found that R.W.1 was acquitted only on benefit of doubt and not acquitted on honorary manner. In such circumstances, the Tribunal accepted the evidence of P.W.2 and rejected the evidence of R.W.1 and 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 award of the Tribunal warranting interference by this Court.

12.As far as the contention of the learned counsel appearing for the appellant-Transport Corporation with regard to quantum of compensation is concerned, this Court in C.M.A. No. 2910 of 2018 filed by the respondents, dismissed the appeal confirming the award passed by the Tribunal.

13.For the above reason, the appeal is dismissed, confirming the award of the Tribunal. 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, to the credit of M.C.O.P. No. 448 of 2009. On such deposit, the respondents 1 and 2 are permitted to withdraw their respective share of the award amount, along with proportionate interest and costs, as per the ratio of apportionment fixed by the Tribunal, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. The share of the minor 3rd respondent is directed to be deposited in any of the Nationalized Banks till she attains majority. The 1st respondent, father of the minor 3rd respondent is permitted to withdraw the interest once in three months for the welfare of the minor 3rd respondent. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

gsa

To

1.The XV Additional Judge,
(Motor Accident Claims Tribunal),
City Civil Court, Chennai.

2.The Section Officer,
V.R Section,
High Court, Madras.

+1cc to Mr.K.J. Sivakumar, Advocate SR.No.23860

+1cc to Ms.M.Malar, Advocate SR.No.23444

C.M.A. No. 2856 of 2013
and M.P. No. 1 of 2013

VG II(CO)
GMY(21/08/2020)