

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2908 of 2013

and

M.P.No.1 of 2013

The Managing Director,
Tamil Nadu State Transport Corporation Limited,
Pallavan House, Chennai - 600 002. ... Appellant/Respondent

Vs.

1.Chenjulaakshmi

2.V.Ramachandran

3.V.R.Mohanapriya ... Respondents/Petitioner

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 30.04.2012 made in M.C.O.P.No.1019 of 2007 on the file of the Motor Accidents Claims Tribunal, Principal District Court, Tiruvallur.

For Appellant : Mr.K.J.Sivakumar

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 30.04.2012 made in M.C.O.P.No.1019 of 2007 on the file of the Motor Accidents Claims Tribunal, Principal District Court, Tiruvallur.

3.The appellant is the respondent in M.C.O.P.No.1019 of 2007 on the file of the Motor Accidents Claims Tribunal, Principal District Court, Tiruvallur. The respondents filed the said claim petition claiming a sum of Rs.6,00,000/- as compensation for the death of one V.R.Hariprasad, who died in the accident that took place on 17.05.2007.

4. According to respondents, on 17.05.2007 at about 20.00 hours, while the deceased was riding his motorcycle bearing Registration No. TN 20 J 4512 along with the claimant in M.C.O.P.No.1066 of 2007 as pillion rider on Tiruvallur - Tiruttani road opposite to K.K.Chatram Petrol Bunk, the driver of the bus belonging to appellant, who was driving the bus from the opposite direction in a rash and negligent manner, dashed against the motorcycle rode by the deceased and caused the accident. In the accident, the rider and pillion rider of the motorcycle sustained grievous injuries. In spite of treatment, the said Hariprasad succumbed to injuries on 24.05.2007 at G.G.H. Therefore, the respondents filed the said claim petition claiming a sum of Rs.6,00,000/- as compensation against the appellant-Transport Corporation.

5. The appellant-Transport Corporation filed counter statement and denied all the averments made by the respondents. According to the appellant, the accident has not occurred as alleged by the respondents. The deceased only rode his motorcycle in a rash and negligent manner, dashed against the left side of the bus and invited the accident. The accident has occurred only due to the rash and negligent act of the deceased and he contributed negligence to the accident. The deceased was not possessing driving license at the time of accident. Hence, the appellant is not liable to pay any compensation to the respondents. The respondents 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 is 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 A.Kamran, claimant in M.C.O.P.No.1066 of 2007 and eyewitness to the accident was examined as P.W.2, Dr.J.R.R.Thiyagarajan was examined as P.W.3 and 18 documents were marked as Exs.P1 to P18. The appellant-Transport Corporation did not let in any oral and documentary evidence.

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.4,51,506/- as compensation to the respondents and dismissed the claim petition as against the respondents 2 and 3.

8. Against the said award dated 30.04.2012 made in M.C.O.P.No.1019 of 2007, the appellant-Transport Corporation has come out with the present appeal.

9.The learned counsel appearing for the appellant contended that the accident occurred only due to the negligent riding by the deceased. The driver of the bus is not responsible for the accident. The driver of the bus was acquitted in the Criminal case. The owner and insurer of the motorcycle were not impleaded as parties in the claim petition. The Tribunal erroneously held that driver of the bus was responsible for the accident and directed the appellant to pay the compensation. In any event, the notional income of Rs.4,500/- per month fixed by the Tribunal and multiplier '15' adopted by the Tribunal is excessive. The total compensation awarded by the Tribunal under different heads are excessive and prayed for setting aside the award passed by the Tribunal.

10.Though notice has been served on the respondents and their names are printed in the cause list, there is no representation on behalf of them, either in person or through counsel.

11.Heard the learned counsel appearing for the appellant-Transport Corporation and perused the entire materials on record.

12.From the materials available on record, it is seen that it is the case of the respondents that while the deceased was riding the motorcycle on the left hand side of the Tiruvallur - Tiruttani road, the driver of the bus belonging to appellant, drove the bus in a rash and negligent manner and dashed against the motorcycle in which the deceased was riding and caused the accident. In the accident, the said V.R.Hariprasad sustained fatal injuries and inspite of treatment, the said V.R.Hariprasad died on 24.05.2007. To substantiate their contention, the 1st respondent examined herself as P.W.1 and pillion rider and the eyewitness, the claimant in M.C.O.P.No.1066 of 2007 was examined as P.W.2 and marked F.I.R. as Ex.P1. On the other hand, it is the contention of the appellant that accident has occurred only due to the negligence on the part of the deceased. The appellant did not examine the driver of the bus or any eyewitness to prove their contention. The Tribunal considering the evidence of P.W.2, F.I.R. and in the absence of any contra evidence, held that accident has occurred only due to rash and negligent driving by the driver of the bus belonging to appellant-Transport Corporation. The learned counsel appearing for the appellant further contended that the driver of the bus was acquitted in the Criminal Proceedings and Tribunal erred in holding that driver of the bus was negligent. The judgment in the Criminal Court is not binding on the Tribunal and the Tribunal has to independently consider the materials placed before it to arrive at a finding of the negligence. In the present case, the Tribunal considering the evidence of P.W.2/eyewitness and in the absence of any contra evidence, held

that accident occurred only due to rash and negligent driving by the driver of the bus belonging to appellant. There is no error in the said finding of the Tribunal warranting interference by this Court.

13.As far as quantum of compensation is concerned, the Tribunal considering the entire materials placed before it, fixed notional income of the deceased at Rs.4,500/- per month and awarded compensation under different heads to the respondents which are not excessive warranting interference by this Court.

14.In the result, this Civil Miscellaneous Appeal is dismissed and a sum of Rs.4,51,506/- 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 award amount 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.1019 of 2007 on the file of the Motor Accidents Claims Tribunal, Principal District Court, Tiruvallur. On such deposit, the 1st respondent is permitted to withdraw the award amount along with proportionate interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. This appeal is dismissed as against the respondents 2 and 3. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-
Asst.Registrar (Audit)

/true copy/

Sub Asst. Registrar

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To

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

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

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+1 cc to Mr.K.J.Sivakumar Advocate sr40979

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