

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.02.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.940 of 2012

and

M.P.No.1 of 2012

The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Salem Division II,
No.12, Ramakrishna Road,
Salem - 7.

... Appellant/Respondent

Vs.

1.Selvi
2.Minor Anand
3.Minor Akila
(Respondents 2 and 3 rep.
by their next friend and mother
1st respondent Selvi)

4.Rajammal

... Respondents/Petitioners

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, against the Judgment and Decree dated 11.10.2011 made in M.C.O.P.No.19 of 2009 on the file of the Subordinate Judge (Motor Accidents Claims Tribunal), Subordinate Court, Harur.

For Appellant : Mr.D.Venkatachalam

For RR1 to 4 : Mr.T.Pappaiah Dharmarajan

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 11.10.2011 made in M.C.O.P.No.19 of 2009 on the file of the Subordinate Judge (Motor Accidents Claims Tribunal), Subordinate Court, Harur.

2. The appellant is the respondent in M.C.O.P.No.19 of 2009 on the file of the Subordinate Judge (Motor Accidents Claims Tribunal), Subordinate Court, Harur. The respondents 1 to 4 herein have filed the above said claim petition claiming a sum of Rs.10,00,000/- as compensation for the death of the deceased Murugan in a road accident that took place on 06.11.2006.

3. On 06.11.2006 at about 12.45 P.M., the deceased was riding his two wheeler (TVS 50) bearing Registration No.TN 29 T 7989 on the left side of the Menasi to Kathiripuram road, at that time the appellant's bus bearing Registration No.TN 29 N 1238 came at a high speed driven by his driver in a rash and negligent manner and dashed against the deceased. The deceased fell down and got injuries and bleeding all over the body. The deceased was taken immediately to Government Hospital, Dharmapuri. He died in the hospital. Prior to the accident, the deceased was hale and healthy and his is aged about 35 years. He was doing agricultural and milk vending business and his monthly income was Rs.8000/- per month. He is the only bread winner of his family.

4. Denying the allegations, the appellant/Transport Corporation has filed a counter affidavit stating that the accident occurred only due to the rash and negligent driving of the deceased. Moreover, the age, income and employment of the deceased are denied and the amount of compensation claimed is highly excessive.

5. During the trial before the Tribunal, on the side of the claimant, the claimant herself was examined as PW1 and marked certain documents as Exs.P1 to P5 and one Mr.Ravi was examined as PW2. On the side of the respondent/Transport Corporation one Mr.Chinnasamy (Conductor) was examined as RW1 and no documents were marked.

6. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to the rash and negligent driving of the appellant's driver and directed the appellant/Transport Corporation to pay a sum of Rs.6,84,000/- as compensation to the respondents herein. Challenging the said award dated 11.10.2011 made in M.C.O.P.No.19 of 2009, the appellant/Transport Corporation has come out with the present appeal.

7. Heard Mr.D.Venkatachalam, learned counsel appearing for the appellant and Mr.T.Pappaiah Dharmarajan, learned counsel appearing for the respondents.

8. Perused the materials available on record. On perusal of F.I.R.-Ex.P1, it is clearly seen that the appellant's driver was in a rash and negligent manner driving the vehicle and dashed against the two-wheeler. Hence, the accident had occurred only due to the rash and negligent driving of the appellant's driver. As there is no documentary evidence to prove the income of the deceased, this Court is convinced that the Court below has rightly fixed a sum of Rs.5,000/- as monthly income of the deceased, who was doing his own agricultural activities and having cattles and doing milk

vending business and also in the habit of buying, breeding and selling the cows and bulls as per the evidence of P.W.1. In the absence of any evidence to prove that the deceased had contributed and a cause for the accident, this Court accepts the findings of the Court below. No fresh material is available for the appellant to prove contra against the said findings. Criminal Proceedings initiated against the appellant's driver would prove the negligence on his part. There is no error in the above findings of the Tribunal warranting interference by this Court and the appeal filed by the appellant/Transport Corporation is without any merits and the same is liable to be dismissed.

9. In the result, this Civil Miscellaneous Appeal is dismissed and the award passed by the Tribunal is hereby confirmed. The Appellant/Transport Corporation is directed to deposit the award amount along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the respondents are permitted to withdraw the award amount along with interest and costs, after adjusting the amount already withdrawn, if any, by making necessary applications before the Tribunal. The apportionment awarded by the Tribunal is confirmed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-VIII)

//True copy//

Sub Assistant Registrar

rsi

To

1.The Subordinate Judge
Motor Accidents Claims Tribunal,
Subordinate Court, Harur.

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

+1cc to Mr.D.Venkatachalam, Advocate SR.No.8715

+1cc to Mr.T.Pappaiah Dharmarajan, Advocate SR.No.8516

C.M.A.No.940 of 2012
and
M.P.No.1 of 2012

BP (CO)
GMY (20/04/2021)