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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 27.11.2020

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THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Civil Miscellaneous Appeal No.3758 of 2019

1.M.Selvi
W/o Muruganandham

2.Minor M.Priyanka
D/o Muruganandham
[Minor represented by her mother
and guardian the 1st petitioner]

... Appellants/Petitioners

-Versus-

The Managing Director,
Tamil Nadu State Transport Corporation
Villupuram Limited,
3/137, Salamedu,
Villupuram.

... Respondent/Respondent

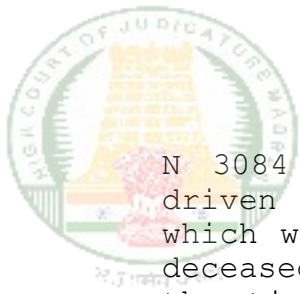
Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the Judgment and decree dated 20.01.2015 made in M.C.O.P.No.327 of 2011 by the Motor Accident Claims Tribunal (II Additional District Judge), Tiruvallur at Poonamallee, Tiruvallur District.

For Appellants : Mr.G.Djearany
For Respondent : Mr.C.S.K.Sathish

JUDGEMENT

The appellants, who are the claimants before the tribunal, not feeling satisfied with the award of compensation have come forward with the instant appeal seeking enhancement of compensation.

2. It is a case of fatal accident. The 1st appellant is the wife and the 2nd appellant is the daughter of the deceased G.Muruganandam. According to the appellants, on 04.11.2010 at 04.30 p.m. while the deceased was driving his Tata Indica Car bearing Regn. No.TN 07 BA 6463 from East to West on Uthiramerur to Vandavasi Road, near Ammayappanallur burial ground, a bus belonging to the respondent Corporation bearing Regn. No. TN 32



N 3084 which came in the opposite direction driven by its driver in a rash and negligent manner dashed against the car which was being driven by the deceased as a result of which the deceased sustained grievous injuries and died on the spot. At the time of the accident, the deceased was 26 years old. The deceased was a driver by profession and was getting an income of sum of Rs.15,000/- per month from his profession. He was the sole breadwinner. Therefore, claiming compensation of Rs.10,00,000/- they filed the claim petition against the respondent corporation.

3. The respondent corporation contested the claim petition contending that the accident was taken place only due to the rash and negligent driving of the car by the deceased. The driver of the respondent corporation was driving the bus carefully and it was only the car which was being driven by the deceased hit against the bus and therefore, the driver of the respondent corporation cannot be held to be negligent and ultimately, the respondent corporation is not liable to compensate the claimants.

4. Before the tribunal in order to prove their case, the appellants/claimants examined the 1st appellant as P.W.1 and one Balaji as P.W.2 and marked four documents as Exs.P.1 to P.4. On the other side, in order to disprove the case of the appellants/claimants, the respondent transport corporation examined one Murali, the conductor of the bus, as R.W.1, however, no documentary evidence was adduced. On considering the available materials, the tribunal came to a conclusion that the accident was taken place due to the rash and negligent driving of the driver of the bus belonging to the respondent corporation. However, considering the fact that at the time of the accident, the deceased did not have a valid driving license as driving license of the deceased got expired as early as on 06.07.2008 and was not renewed thereafter, the tribunal fixed 50% of the contributory negligence on the deceased. So far as the quantum of compensation, the tribunal assessed the monthly income of the deceased as Rs.6,500/- and after deducting 1/3rd from it towards personal expenses of the deceased had he been alive arrived at the monthly contribution of the deceased to the family at Rs.4334/- per month and at Rs.52,008 per annum - rounded to Rs.52,000/-. Considering the age of the deceased, the tribunal adopted the multiplier of 18 and calculated the loss of dependency at Rs.9,36,000/- and apart from the above, a sum of Rs.10,000/- towards funeral expenses, a sum of Rs.5,000/- towards transport expenses, a sum of Rs.30,000/- towards loss of love and affection to the 2nd petitioner, a sum of Rs.50,000/- towards loss of consortium to the 1st appellant and a sum of Rs.1,000/- towards damages to the clothings were awarded by the tribunal. However, in view of the finding recorded on



contributory negligence, the tribunal held that the appellants are entitled to only 50% of the compensation. Feeling aggrieved over the inadequacy of the award of compensation as well as challenging the finding on the contributory negligence, the claimants are before this court with the instant appeal.

5. I have heard the learned counsel for the appellants and the learned counsel for the respondent corporation and also perused the records carefully.

6. The primordial contention of the learned counsel appearing for the appellants is that, after having held that the accident was taken place due to the rash and negligent driving of the driver of the bus of the respondent corporation, the tribunal ought not to have held that the deceased was equally contributed to the accident for the reason that he did not have a valid driving license to drive the car as the license obtained by him got expired long back. The finding of the tribunal in fixing contributory negligence on the deceased merely for the reason that the license of the deceased was not renewed after 2008 is not legally sustainable.

7. The eye witness to the accident was examined as P.W.2. He had clearly narrated the way in which the accident had taken place. Nothing has been elicited during cross examination of P.W.2 by the respondent corporation to disbelieve his version. Accepting the evidence of P.W.2 and the other material evidence placed on record, the tribunal has held that the accident was taken place due to the rash and negligent driving of the driver of the bus of the respondent corporation. However, having found that driving license of the deceased (Ex.P.4) was not renewed after 2008, the tribunal fixed 50% of negligence on the deceased and proceeded to direct the respondent corporation to pay only 50% of the compensation. In the considered opinion of this court such finding is not sustainable in the eye of law. It is the settled law that merely because the deceased did not have valid driving license at the time of accident, no negligence could be attributed to the deceased. Driving a vehicle in a rash and negligent manner is one thing and not possessing a valid driving license is another thing. Driving of vehicle without valid license may be an offence under the Motor Vehicles Act and that itself is not a ground to fix negligence on the deceased. Unless it is established that the deceased had driven the vehicle rashly and negligently and contributed to the accident, no negligence could be attributed to the deceased merely for the reason that he did not have a valid license.

8. The Hon'ble Supreme court in *Sudhir Kumar Rana v. Surinder Singh*, (2008) 12 SCC 436 has held as follows:-



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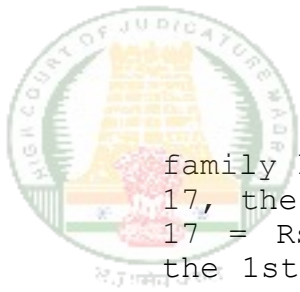
"9. If a person drives a vehicle without a licence, he commits an offence. The same, by itself, in our opinion, may not lead to a finding of negligence as regards the accident. It has been held by the courts below that it was the driver of the mini truck who was driving rashly and negligently. It is one thing to say that the appellant was not possessing any licence but no finding of fact has been arrived at that he was driving the two-wheeler rashly and negligently. If he was not driving rashly and negligently which contributed to the accident, we fail to see as to how, only because he was not having a licence, he would be held to be guilty of contributory negligence.

10. The matter might have been different if by reason of his rash and negligent driving, the accident had taken place."

9. The above said judgement was subsequently followed by the Hon'ble Supreme Court in Dinesh Kumar v. National Insurance Co. Ltd., (2018) 1 SCC 750.

10. In the instant case, as already discussed, the tribunal though found that the accident was taken place due to the rash and negligent driving of the driver of the bus of the respondent corporation, merely because the deceased did not have a valid license on the date of accident as the license got expired in 2008 and was not renewed thereafter, the tribunal held that the deceased was also contributed negligence to the accident. In the considered opinion of this court, the finding of the tribunal on the contributory negligence is not sustainable in law and the same is liable to be set aside. The respondent corporation is solely liable to pay the compensation that could be arrived at in this appeal.

11. So far as the quantum of compensation is concerned, admittedly, the deceased was a driver by profession. The accident was taken place in the year 2010. Apart from salary, the deceased would have also been paid batta every day. Considering the same, this court is of the view that the deceased would have easily earned at least a sum of Rs.7,000/- per month. At the time of accident, the deceased was aged 26 years and therefore, a benefit of 40% could be added towards future prospects which works out to Rs.2,800/-. Thus, the total income of the deceased would notionally be a sum of Rs.9,800/-. There are two dependents and if 1/3rd of the income is deducted from the monthly income, the deceased would have contributed a sum of Rs.6534/- which could be rounded to Rs.6,600/- to the



family had he been alive and thus, by adopting the multiplier of 17, the loss of dependency could be calculated as Rs.6534 x 12 x 17 = Rs.13,46,400/-. Insofar as the other conventional heads, the 1st appellant being the wife of the deceased is entitled to a sum of Rs.40,000/- towards loss of consortium and the 2nd claimant being the minor daughter is entitled to a sum of Rs.40,000/- towards parental consortium and besides the above, the appellants are also entitled to a sum of Rs.15,000/- towards funeral expenses, a sum of Rs.15,000/- towards loss of estate and a sum of Rs.15,000/- towards transport charges. In all, the appellants are entitled to get a sum of Rs.14,61,400 rounded up to Rs.14,62,000/- from the respondent as compensation together with interest @ 7.5% p.a. from the date of claim petition till date of deposit in full as compensation.

In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation of Rs.5,16,000/- being 50% of compensation on Rs.10,32,000/- awarded by the Tribunal is hereby enhanced to Rs.14,62,000/- together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit. The respondent corporation is directed to deposit the entire compensation determined above together with interest and costs in the claim petition, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. The enhanced compensation shall be proportionately shared among the appellants as per the order of the tribunal. The share of the minor appellant shall be invested in any one of the Nationalized Bank until the minor attains majority and the 1st appellant is permitted to withdraw the interest accrued on such investment once in every six months for the welfare of the minor appellant. Considering the facts and circumstances of the case, both parties shall bear their own costs in this appeal.

Sd/-

Assistant Registrar(CS I)

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Sub Assistant Registrar

kmk

To

1. The Motor Accident Claims Tribunal
(II Additional District Judge),
Tiruvallur at Poonamallee, Tiruvallur District.



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

+1CC to M/s.SMKS.Susmitha, Advocate, Sr.No.38363

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C.M.A.No.3758 of 2019

PM (CO)
K.RK. (03.09.2021)