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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2092 of 2014

and

M.P.No.1 of 2014

The Managing Director
Tamil Nadu State Transport
Corporation (Villupuram) Ltd.
No.3/137, Salamedu, Vazhuthareddy
Villupuram-605 602.

... Appellant/Respondent

Vs.

1.Rajammal
2.Manikandan
3.Sugumar
4.Thiyakarajan

... Respondents/Petitioner

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 13.11.2013 made in M.C.O.P.No.127 of 2009 on the file of Motor Accident Claims Tribunal, II Additional District Court, Pondicherry.

For Appellant : Mr.K.J.Sivakumar

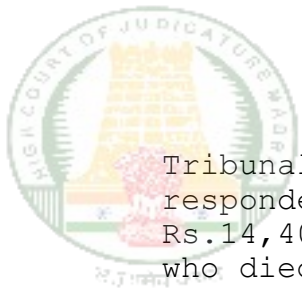
For Respondents : Ms.C.R.Rukmani
for Mr.A.Muthukumar

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 13.11.2013 made in M.C.O.P.No.127 of 2009 on the file of Motor Accident Claims Tribunal, II Additional District Court, Pondicherry.

2.The appellant/Transport Corporation is the respondent in M.C.O.P.No.127 of 2009 on the file of Motor Accident Claims



Tribunal, II Additional District Court, Pondicherry. The respondents filed the said claim petition claiming a sum of Rs.14,40,000/- as compensation for the death of one Arunkumar, who died in the accident that took place on 26.12.2007.

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3. According to the respondents, on the date of accident i.e., on 26.12.2007 at 5.00 a.m., while the deceased was travelling in the motorcycle from Anandhapuram to Puducherry from West to East direction near Sulthanpet Bus stop, the bus belonging to the appellant/Transport Corporation, which was coming in the opposite direction, driven by its driver in a rash and negligent manner, dashed against the deceased and caused the accident. In the accident, the deceased Arunkumar sustained fatal injuries and died on the spot. 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 respondents are not the legal heirs and dependants of the deceased. The driver of the bus is not responsible for the accident. The rider of the motorcycle dashed against the iron barricade and fell in front of the bus. The accident has occurred due to negligence of the deceased and hence, the deceased is solely responsible for the accident. The driver of the bus has also lodged a complaint against the rider of the motorcycle. The rider of the motorcycle did not possess valid driving license to ride the motorcycle. 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, mother of the deceased, examined herself as P.W.1, one Devarassou, an eye-witness to the accident, was examined as P.W.2 and ten documents were marked as Exs.P1 to P10. The appellant/Transport Corporation examined D.Thamizmani, the driver of the bus as R.W.1 and marked the rough sketch as Ex.R1.

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.9,08,000/- as compensation to the respondents 1 and 2, parents of the deceased alone and the respondents 3 and 4, who are sons of the respondents 1 and 2 are not entitled to any compensation for the death of their brother as they are dependants of the respondents 1 and 2.



7. Against the said award dated 13.11.2013 made in M.C.O.P.No.127 of 2009, the appellant/Transport Corporation has come out with the present appeal.

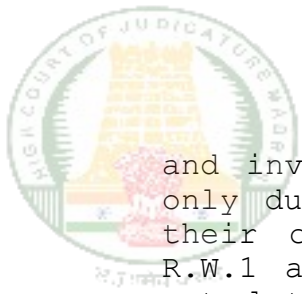
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8. The learned counsel appearing for the appellant/Transport Corporation contended that the Tribunal ought not to have considered the evidence of P.W.1/mother of the deceased, who is not an eye-witness. The Tribunal erred in fixing negligence on the part of the driver of the bus belonging to the appellant/Transport Corporation merely based on Ex.P1/F.I.R. The Tribunal ought to have considered the evidence of the driver of the bus as R.W.1. The learned counsel further contended that the respondents have not filed any valid document to prove the age, avocation and income of the deceased. In the absence of any material evidence, the Tribunal erred in fixing the age of the deceased as 25 years and a sum of Rs.10,000/- per month as notional income of the deceased. The multiplier applied by the Tribunal is on the higher side. The amounts awarded by the Tribunal under different heads are excessive and prayed for setting aside the award of the Tribunal.

9. The learned counsel appearing for the respondents made submissions in support of the award passed by the Tribunal and contended that the Tribunal after considering the oral and documentary evidence, awarded compensation, which is not excessive and prayed for dismissal of the appeal.

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

11. From the materials available on record, it is seen that it is the contention of the respondents that while the deceased was travelling in the motorcycle from Anandhapuram to Puducherry from West to East direction near Sulthanpet Bus stop, the bus belonging to the appellant/Transport Corporation, which was coming in the opposite direction, driven by its driver in a rash and negligent manner, dashed against the deceased and caused the accident. The respondents have examined P.W.2, an eye-witness to the accident and marked the F.I.R., which was registered against the driver of the bus as Ex.P1, to substantiate their contention. On the other hand, it is the contention of the appellant/Transport Corporation that the driver of the bus drove the bus in a careful manner and the rider of the motorcycle dashed against the iron barricade and fell in front of the bus



and invited the accident. Therefore, the accident has occurred only due to negligence on the part of the deceased. To prove their case, the appellant examined the driver of the bus as R.W.1 and marked the rough sketch as Ex.R1. The appellant has not let in any independent witness to prove their contention. The driver of the bus has also not filed any objection to the contents of F.I.R. and has not lodged any complaint against the deceased. The Tribunal considering the evidence of P.W.1, P.W.2, contents of Ex.P1/F.I.R and failure on the part of the appellant to examine any independent eye-witness, held that the accident has occurred only due to rash and negligent driving by the driver of the bus belonging to the appellant/Transport Corporation and directed the appellant to pay the compensation to the respondents. There is no error in the said finding of the Tribunal warranting interference by this Court.

12.As far as quantum of compensation is concerned, the respondents have contended that the deceased was working as a driver and was earning a sum of Rs.10,000/- per month. They have marked pay certificate of the deceased as Ex.P10 to prove the income. As per Ex.P10, the monthly income of the deceased is Rs.12,000/-. The Tribunal considering the same, fixed a sum of Rs.10,000/- per month as notional income of the deceased, which is not meagre. The Tribunal fixed the age of the deceased as 25 years at the time of accident based on Ex.P3/post-mortem certificate and applied multiplier '15', which is not correct. As per the judgment of the Hon'ble Apex Court reported in 2009 (2) TNMAC 1 SC Supreme Court (Sarla Verma vs. Delhi Transport Corporation), the correct multiplier applicable is '18'. The Tribunal failed to award any amount towards future prospects. The deceased was aged 25 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 respondents are entitled to 40% enhancement towards future prospects. Further, a sum of Rs.5,000/- and Rs.2,500/- awarded by the Tribunal towards funeral expenses and loss of estate respectively are meagre. In view of the above, the sum of Rs.9,08,000/- awarded by the Tribunal as compensation to the respondents 1 and 2 under different heads, is not excessive warranting interference by this Court.

13. In the result, this Civil Miscellaneous Appeal is dismissed and the sum of Rs.9,08,000/- awarded by the Tribunal as compensation to the respondents 1 and 2 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 1 and 2 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 IX)

//True Copy//

Sub Assistant Registrar

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To

1.The II Additional District Judge,
Motor Accident Claims Tribunal,
Pondicherry.

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

+1cc to Mr.A.Muthukumar, Advocate Sr.41236
+1cc to Mr.K.J.Sivakumar, Advocate Sr.40981

C.M.A.No.2092 of 2014
and
M.P.No.1 of 2014

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srg 24/08/2021