

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.11.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No.218 of 2014
and C.M.P. No. 16517 of 2016
in Cross Objection SR.66877 of 2016

C.M.A. No.218 of 2014

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

.. Appellant /Respondent in
Cross Objection

Vs.

1.S. Sankari
2.S. Pradeepan (Minor)
Rep. By his mother and N.F, the 1st respondent
3.P. Angammal
4.C. Pavadairayan

.. Respondents/Cross Objectors

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 22.07.2013, made in M.C.O.P. No.5868 of 2011, on the file of the III Small Causes Court, (Motor Accident Claims Tribunal), Chennai.

For Appellant : Mr. C.S.K. Sathish

For Respondents: Mr. R. Kalaiarasan
for M/s. N.M. Muthuranjan

Cross Objection SR.66877 of 2016

1.S. Sankari
2.S. Pradeepan (Minor)
Rep. By his mother and N.F, the 1st objector
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.. Cross Objectors

Vs.

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

.. Respondent

Prayer: This Cross Objection is filed under Order 173(1) of M.V.Act,1988 against the judgment and decree dated 22.07.2013, made in M.C.O.P. No.5868 of 2011, on the file of the III Small Causes Court, (Motor Accident Claims Tribunal), Chennai.

For Cross Objectors : Mr. R. Kalaiarasan
for M/s. N.M. Muthuranjan

For Respondent : Mr. C.S.K. Sathish

C O M M O N J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant-Transport Corporation against the award dated 22.07.2013, made in M.C.O.P. No.5868 of 2011, on the file of the III Small Causes Court, (Motor Accident Claims Tribunal), Chennai.

C.M.P.No.16517 of 2016 is filed to condone the delay of 857 days in filing Cross Objection SR.66877 of 2016 which has been filed seeking enhancement of compensation granted by the Tribunal by the award dated 22.07.2013, made in M.C.O.P. No.5868 of 2011, on the file of the III Small Causes Court, (Motor Accident Claims Tribunal), Chennai.

2.The appellant is the respondent in M.C.O.P. No.5868 of 2011, on the file of the III Small Causes Court, (Motor Accident Claims Tribunal), Chennai. The respondents filed the said claim petition, claiming a sum of Rs.20,00,000/- as compensation for the death of one P.Selvam who died in the accident that took place on 25.09.2011.

3.According to the respondents, on the date of accident viz., 25.09.2011, the deceased was riding his Motorcycle bearing Registration No.PY-01-AX-1150 from Tambaram to Kodambakkam along Jawaharlal Nehru 100 feet road. At about 19.15 hours, when the deceased was proceeding opposite to Ram Hardware, Ashok Nagar, a Bus bearing Registration No.TN-32-N-2510 belonging to the appellant-Transport Corporation, driven by its driver in a rash and negligent manner from behind, dashed against the Motorcycle rode by the deceased and caused the accident. In the accident,

the deceased succumbed fatal injuries. The accident has occurred only due to rash and negligent driving by the Driver of the Bus belonging to the appellant-Transport Corporation and hence, the respondents filed the claim petition, claiming compensation against the appellant-Transport Corporation as owner of the offending vehicle.

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, the accident occurred when the deceased over took the Bus belonging to the appellant-Transport Corporation and dashed against the Bus and also against a school children's bicycle. The driver of the Bus did not drive the vehicle in a rash and negligent manner. The deceased rider of the Motorcycle did not possess valid driving license at the time of accident. The claim petition is bad for non-joinder of owner and insurer of the Motorcycle. The respondents have to prove the age, avocation and income of the deceased by documentary evidence to claim compensation. In any event, the total compensation claimed by the respondents is excessive and prayed for dismissal of the claim petition.

5.Before the Tribunal, the 1st respondent examined herself as P.W.1, examined eye-witness as P.W.2 and co-worker of the deceased as P.W.3 and marked 10 documents as Exs.P1 to P10. The respondent examined the driver of the Bus as R.W.1, but did not let in any documentary evidence.

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.12,47,500/- as compensation to the respondents.

7.Against the award dated 22.07.2013, made in M.C.O.P. No.5868 of 2011, the appellant-Transport Corporation has come out with the present appeal.

8.Not being satisfied with the amounts awarded by the Tribunal, the respondents have filed Cross-Objection seeking enhancement of compensation and the same is in SR stage.

9.The learned counsel appearing for the appellant-Transport Corporation contended that the Tribunal erred in fixing negligence on the driver of the Bus merely relying on the evidence of P.W.2 and FIR. The Tribunal failed to consider the evidence of R.W.1 - driver of the Bus. The Tribunal ought to have fixed contributory negligence on the part of the deceased.

In any event, the respondents failed to prove the age, avocation and income of the deceased. In the absence of material evidence, the Tribunal erred in fixing the monthly income and granted compensation by awarding 50% enhancement towards future prospects, applying the multiplier '17', which is excessive. The amounts awarded by the Tribunal under conventional heads are also excessive and prayed for setting aside the award of the Tribunal.

10. Per contra, the learned counsel appearing for the respondents contended that the driver of the Bus drove the same in a rash and negligent manner and dashed against the Motorcycle in which the deceased was riding and caused the accident. Due to the injuries, the deceased died on the spot. The respondents proved the same by examining P.W.2 - eye witness and marked FIR as Ex.P1 and Ex.P5 - Charge Sheet laid against R.W.1 - driver of the Bus. The Tribunal considering the materials, fixed monthly income and awarded compensation, which is not excessive. The respondents have also filed Cross Objection and the same is pending in SR stage and prayed for dismissal of the appeal and for enhancement of the compensation.

11. Heard the learned counsel appearing for the appellant as well as the respondents and perused the materials available on record.

12. From the materials on record, it is seen that it is the contention of the respondents that R.W.1 - driver of the Bus drove the bus in a rash and negligent manner and caused accident and in the accident, one P.Selvam, husband of the 1st respondent sustained injuries and died on the spot. In support of their claim, they have examined P.W.2 - eye witness who lodged the complaint against the driver of the Bus. The FIR was registered against the driver of the Bus and after investigation, Charge Sheet has been laid against R.W.1. On the other hand, it is the contention of the appellant that only due to the negligence on the part of the deceased, the accident has occurred. To substantiate the said contention, they examined the driver of the Bus as R.W.1. R.W.1 has deposed that he lodged complaint against the deceased, but he has not filed the same and not filed any proof to show the action taken on the alleged complaint. The Tribunal considering the evidence of P.W.2, Exs.P1 and P5 - FIR and Charge Sheet respectively and evidence of R.W.1, held that the accident has occurred only due to rash and negligent driving by the driver of the Bus belonging to the appellant. There is no error in the said finding of the Tribunal warranting interference by this Court.

13.As far as the quantum of compensation is concerned, the respondents have claimed that the deceased was 26 years at the time of accident, working as a Electrician and was earning a sum of Rs.750/- per day. To substantiate the said contention, they have examined P.W.3 who alleged to have worked along with the deceased. Except oral evidence of P.W.3, the respondents have not produced any acceptable evidence with regard to income of the deceased. In the absence of any material evidence with regard to avocation and income, the Tribunal fixed notional income of the deceased at Rs.5,000/- per month and granted 50% enhancement towards future prospects. The Tribunal considering the Post-Mortem certificate marked as Ex.P3, fixed the age of the deceased at 26 years and applied the multiplier '17'. The respondents are entitled to only 40% enhancement towards future prospects, as against 50% granted by the Tribunal. The Tribunal has granted Rs.50,000/- towards loss of consortium to the 1st respondent and also Rs.10,000/- towards loss of love and affection to each of the respondents. In view of 50% enhancement granted towards future prospects to the respondents and the excessive amounts under the head, loss of consortium, the respondents are not entitled for any enhancement of compensation under other heads.

14.In the result, the appeal is dismissed and the compensation awarded by the Tribunal at Rs.12,47,500/- together with 7.5% interest from the date of petition till the date of deposit is confirmed. The appellant-Transport Corporation is directed to deposit the compensation awarded by the Tribunal, together with interest and costs, 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.5868 of 2011. On such deposit, the respondents 1, 3 and 4 are permitted to withdraw their 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 2nd respondent is directed to be deposited in any one of the Nationalized Banks, till the minor attains majority. The 1st respondent, mother of the minor 2nd respondent is permitted to withdraw the accrued interest, once in three months for the welfare of the minor 2nd respondent. In view of the judgment passed in Civil Miscellaneous Appeal, C.M.P. No.16517 of 2016 is dismissed and the Cross Objection SR.66877 of 2016 is rejected at the SR stage itself. No costs.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

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To

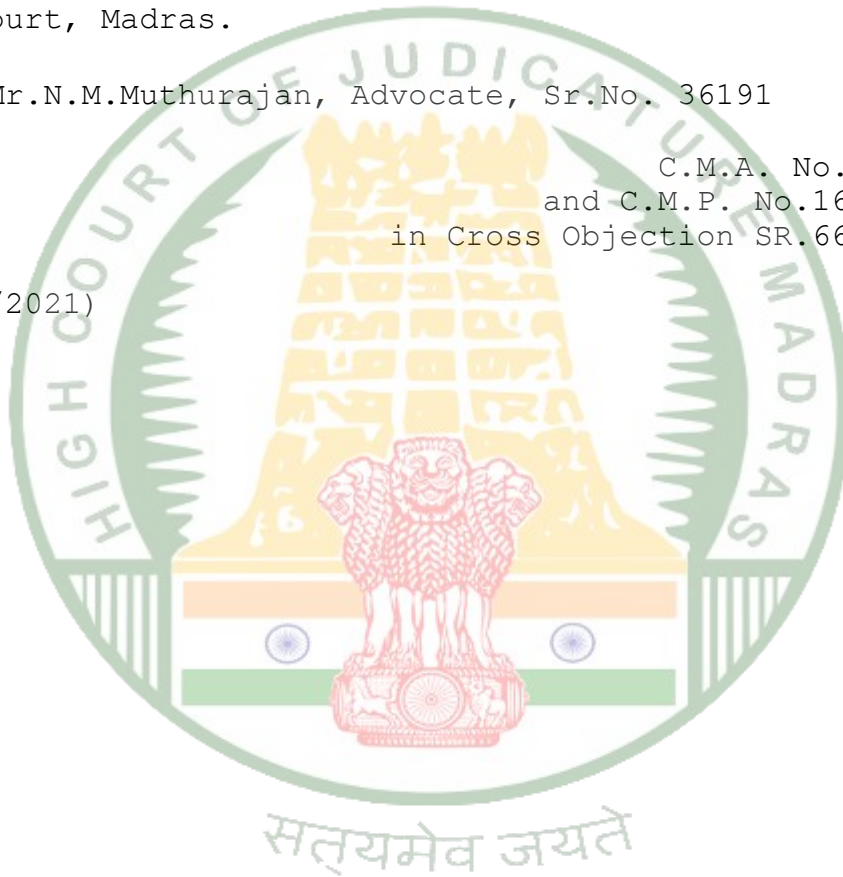
1.The Judge,
III Small Causes Court,
(Motor Accident Claims Tribunal), Chennai.

Copy To:
The Section Officer,
V.R Section,
High Court, Madras.

+2ccs to Mr.N.M.Muthurajan, Advocate, Sr.No. 36191

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VSNII (CO)
RMP (11/06/2021)



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