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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2330 of 2014

and

M.P.No.1 of 2014

The Managing Director  
Tamil Nadu State  
Transport Corporation Ltd.  
Division - II  
37, Mettupalayam Road  
Coimbatore.

... Appellant/Respondent

Vs.

1.Madheswari  
2.Vimala  
3.Amala  
4.Vasanth

.. Respondents/Petitioners

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 12.01.2012 made in M.C.O.P.No.228 of 2009 on the file of Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Salem District.

For Appellant : Ms.R.T.Sundari

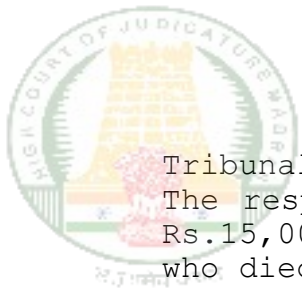
For Respondents : No appearance

#### 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 12.01.2012 made in M.C.O.P.No.228 of 2009 on the file of Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Salem District.

2.The appellant/Transport Corporation is respondent in M.C.O.P.No.228 of 2009 on the file of Motor Accident Claims



Tribunal, Chief Judicial Magistrate's Court, Salem District. The respondents filed the said claim petition claiming a sum of Rs.15,00,000/- as compensation for the death of one Periyasamy, who died in the accident that took place on 03.11.2008.

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3. According to the respondents on the date of accident, i.e., on 03.11.2008 at about 0.45 hours, while the deceased Periyasamy along with others were travelling in a bus belonging to the appellant/Transport Corporation on Bhavani - Sankari Main Road, near Sankari West Post Office, the driver of the bus drove the same in a rash and negligent manner, dashed against the lorry, which was coming in the opposite direction and caused the accident. In the accident, the deceased Periyasamy succumbed to his injuries on the same day in hospital. Therefore, the respondents filed the above claim petition seeking compensation as against the appellant/Transport Corporation.

4. The appellant/Transport Corporation filed counter statement denying the averments made in the claim petition and stated that the driver of the lorry drove the same in a rash and negligent manner, dashed against the right back side of the bus and he is responsible for the accident. The accident did not occur due to negligence on the part of the driver of the bus. F.I.R. has been registered against the driver of the lorry. The driver, owner and insurer of the lorry were not made as parties to the claim petition and hence, the claim petition is bad for non-joinder of necessary parties. Therefore, the appellant/Transport Corporation 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 1<sup>st</sup> respondent, wife of the deceased, examined herself as P.W.1, one Mani, eye-witness to the accident, was examined as P.W.2 and six documents were marked as Exs.P1 to P6. The appellant/Transport Corporation examined the driver of the lorry as R.W.1 and 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.5,17,500/- as compensation to the respondents.

7. Against the said award dated 12.01.2012 made in M.C.O.P.No.228 of 2009, the appellant/Transport Corporation has



come out with the present appeal.

8.The learned counsel appearing for the appellant/Transport Corporation contended that the Tribunal erroneously fixed negligence on the part of the driver of the bus and liability on the appellant. The appellant has let in evidence to prove that the accident has occurred only due to rash and negligent driving by the driver of the lorry. F.I.R. was registered only against the driver of the lorry. The Tribunal ought to have accepted the version of the appellant and dismissed the claim petition. The learned counsel further contended that the amounts awarded by the Tribunal for loss of income and other heads are excessive and prayed for setting aside the award of the Tribunal.

9.Though the respondents entered appearance through the counsel, when the matter is taken up for hearing, there is no representation for them.

10.Heard the learned counsel appearing for the appellant and perused the entire materials on record.

11.It is the contention of the respondents that while the deceased was travelling in the bus, the driver of the bus drove the bus in a rash and negligent manner and dashed against the lorry, which was coming in the opposite direction and caused the accident. In the accident, the deceased sustained injuries and died. To prove the same, the 1<sup>st</sup> respondent, wife the deceased, examined herself as P.W.1 and an eye-witness to the accident as P.W.2, who travelled along with the deceased. On the other hand, it is the contention of the appellant that the driver of the bus drove the bus cautiously, while so the driver of an unknown lorry who came from the opposite direction in a rash and negligent manner, dashed against the bus and did not stop the lorry. F.I.R. was registered against the driver of the unknown lorry. To substantiate this contention, the appellant examined the driver of the bus as R.W.1. The Tribunal considering the evidence of P.W.2 and the judgments relied on by the learned counsel appearing for the respondents held that based on F.I.R. alone, it cannot be held that the driver of the bus is not responsible for the accident. On such finding, the Tribunal directed the appellant to pay the compensation.

12.From the award of the Tribunal, it is seen that though the bus and lorry were damaged on their right side, the deceased who was sitting on the right side of the bus sustained injuries. The Tribunal failed to see that two heavy vehicles were involved in the accident and right side of the bus was damaged. R.W.1, the driver of the bus deposed that the accident has occurred only due to negligence on the part of the driver of the lorry



and lodged the complaint. P.W.2, who was travelling along with the deceased, who is an eye-witness did not lodge any complaint against the driver of the lorry. The contents in the F.I.R. cannot be taken as sole criteria for fixing negligence. At the same time, it can be considered along with the evidence on record to come to a conclusion with regard to negligence. Considering the place of damage caused to the bus, evidence of P.W.2, R.W.1 and F.I.R., this Court is of the considered view that the accident has occurred due to negligence on the part of both the drivers of bus as well as lorry and 50 : 50 contributory negligence is fixed on the driver of the bus belonging to the appellant as well as driver of the lorry. In view of the same, the appellant is liable to pay only 50% of the compensation awarded by the Tribunal.

13.As far as contention of the learned counsel appearing for the appellant that quantum of compensation awarded by the Tribunal is excessive is concerned, the Tribunal considering the entire materials, fixed notional income of the deceased and awarded compensation under different heads, which are not excessive warranting interference by this Court.

14.With the above modification, the Civil Miscellaneous Appeal is partly allowed. The compensation of Rs.5,17,500/- awarded by the Tribunal along with interest and costs is confirmed. The appellant/Transport Corporation is directed to deposit 50% of the award amount i.e., Rs.2,58,750/-, 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 are permitted to withdraw the modified award amount now determined by this Court, as per the apportionment made by the Tribunal, along with proportionate interest and costs, after adjusting the amount if any, already withdrawn. The appellant/Transport Corporation is permitted to withdraw the excess amount, if any lying in the deposit to the credit of M.C.O.P.No.228 of 2009 on the file of Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Salem District, if the entire award amount has already been deposited by them.. Consequently, connected Miscellaneous Petition is closed. No costs

Sd/-

Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

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To  
1.The Chief Judicial Magistrate  
Motor Accident Claims Tribunal  
Salem District.

2.The Section Officer  
VR Section  
High Court  
Madras.

C.M.A.No.2330 of 2014  
and M.P.No.1 of 2014

MP (CO)  
GMY (01/09/2021)