

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3686 of 2014

and

M.P.No.1 of 2014

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

.. Appellant/ Respondent

Vs.

1.Paranthal

2.Mangan

3.Valarmathi

4.Minor. Vaitheshwari .. Respondents/Claimants

(Minor 4th respondent represented by her
mother, Valarmathi, 3rd respondent herein)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 25.01.2012 made in M.C.O.P.No.191 of 2010 on the file of the Motor Accidents Claims Tribunal, Principal Sub Court, Vridhachalam.

For Appellant : Mr.K.J.Sivakumar

For Respondents: Mr.G.Anabaya Chozhan

J U D G M E N T

The matter is heard through "Video Conferencing".

2.This Civil Miscellaneous Appeal has been filed against the award dated 25.01.2012 made in M.C.O.P.No.191 of 2010 on the file of the Motor Accidents Claims Tribunal, Principal Sub Court, Vridhachalam.

3.The appellant is the respondent in M.C.O.P.No.191 of 2010 on the file of the Motor Accidents Claims Tribunal, Principal

Sub Court, Vridhachalam. The respondents filed the said claim petition claiming a sum of Rs.15,00,000/- as compensation for the death of one Murugan, who died in the accident that took place on 09.03.2010.

4. According to respondents, on 09.03.2010 at about 07.40 hours, the deceased along with one Periyasamy was travelling in the bus belonging to the appellant from Kandiankuppam to Veerareddikuppam. When the deceased Murugan was attempting to alight from the bus, the driver of the bus without noticing the same, suddenly started the bus in a rash and negligent manner at a high speed. Due to the same, the deceased lost his control, fell down from the bus and the rear wheel of the bus ran over his head and he died on the spot. Therefore, the respondents filed the said claim petition claiming a sum of Rs.15,00,000/- as compensation against the appellant-Transport Corporation.

5. The appellant-Transport Corporation filed counter statement and denied all the averments made by the respondents and stated that the accident has not occurred as alleged by the respondents. At the time of accident, the deceased got down from the front door of the bus at Veerareddikuppam bus stop. Suddenly he changed his idea and tried to enter into the bus, fell down and died. Therefore, there was no negligence on the part of the driver of the appellant and the accident has occurred only due to negligence on the part of the deceased. Therefore, the appellant is not liable to pay any compensation to the respondents. In any event, the quantum of compensation claimed by the respondents is highly excessive and prayed for dismissal of the claim petition.

6. Before the Tribunal, the 3rd respondent examined herself as P.W.1, one Periyasamy, eyewitness to the accident was examined as P.W.2 and 9 documents were marked as Exs.P1 to P9. The appellant-Transport Corporation did not let in any oral and documentary evidence.

7. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the bus belonging to appellant-Transport Corporation and directed the appellant to pay a sum of Rs.7,54,000/- as compensation to the respondents.

8. Against the said award dated 25.01.2012 made in M.C.O.P.No.191 of 2010, the appellant-Transport Corporation has come out with the present appeal.

9. The learned counsel appearing for the appellant-Transport Corporation contended that the Tribunal ought not to have considered the evidence of P.W.1, who is not an eyewitness to

the accident. Mere registering of F.I.R. against the driver of the bus is not the only basis for fixing negligence against the driver of the bus. The respondents have not proved the age, avocation and income of the deceased by producing valid documents. In such circumstances, the monthly income fixed by the Tribunal at Rs.4,500/- per month is excessive. The total compensation awarded by the Tribunal at Rs.7,54,000/- is highly excessive and prayed for setting aside the award passed by the Tribunal.

10.The learned counsel appearing for the respondents made his submissions in support of the award passed by the Tribunal and prayed for dismissal of the appeal.

11.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 on record.

12.From the materials available on record, it is seen that it is the contention of the respondents that the accident has occurred only due to rash and negligent driving by the driver of the bus belonging to appellant-Transport Corporation. To prove the said contention, the 3rd respondent examined herself as P.W.1, one Periyasamy, an eyewitness to the accident who traveled along with the deceased was examined as P.W.2, marked F.I.R. as Ex.P1, which was registered against the driver of the appellant bus and also marked Ex.P3/M.V.I. Report. In Ex.P3/M.V.I. Report, it has been mentioned that accident has not occurred due to mechanical defect of the bus. On the other hand, it is the contention of the appellant that the accident has occurred only due to negligence on the part of the deceased as the deceased only changed his idea and tried to enter into the bus, fell down and invited the accident. To prove the said contention, the appellant has not examined the driver of the bus or any eyewitness and have also not filed any document to support their contention that accident has occurred only due to negligence on the part of the deceased. The Tribunal considering the evidence of P.W.1, P.W.2, Exs.P1 & P3 and in the absence of any contra evidence on the part of the appellant, held that accident has occurred only due to rash and negligent driving by the driver of the bus belonging to appellant-Transport Corporation. There is no error in the said finding of the Tribunal warranting interference by this Court.

13.As far as quantum of compensation is concerned, the Tribunal considering all the materials in proper perspective, awarded a sum of Rs.7,54,000/- as compensation to the respondents which is not excessive and the same is hereby confirmed.

14.In the result, this Civil Miscellaneous Appeal is dismissed and a sum of Rs.7,54,000/- awarded by the Tribunal as compensation to the respondents, along with interest and costs is confirmed. The appellant-Transport Corporation is directed to deposit the award amount along with interest and costs, less the amount if any already deposited, 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.191 of 2010 on the file of the Motor Accidents Claims Tribunal, Principal Sub Court, Vridhachalam. On such deposit, the respondents 1 to 3 are permitted to withdraw the respective share of the award amount as per the ratio of apportionment made by the Tribunal, along with proportionate interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. The share of the minor 4th respondent is directed to be deposited in any one of the Nationalized Banks, till the minor 4th respondent attains majority. On such deposit, the 3rd respondent, being the mother of the minor 4th respondent is permitted to withdraw the accrued interest once in three months for the welfare of the minor 4th respondent. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

krk

To

1.The Principal Subordinate Judge,
Motor Accidents Claims Tribunal,
Vridhachalam.

Copy To :
The Section Officer,
VR Section,
High Court, Madras.

+1 cc to M/s.K.J.Sivakumar, Advocate Sr.No. 42563

C.M.A.No.3686 of 2014

KV(CO)
RMP(30/04/2021)