



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.615 of 2014
and
M.P.No.1 of 2014

The Managing Director,
State Express Transport Corporation Limited,
Thiruvalluvar House, Pallavan Salai,
Chennai - 600 002. .. Appellant/ Respondent
Vs.

1.Saroja

2.Ayyappan

3.Balakrishnan .. Respondents/Claimants

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 02.11.2012 made in M.C.O.P.No.453 of 2011 on the file of the Motor Accidents Claims Tribunal, Principal Sub Court, Tindivanam.

For Appellant : Mr.K.J.Sivakumar
For R1 : No appearance

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 02.11.2012 made in M.C.O.P.No.453 of 2011 on the file of the Motor Accidents Claims Tribunal, Principal Sub Court, Tindivanam.

3.The appellant is the respondent in M.C.O.P.No.453 of 2011 on the file of the Motor Accidents Claims Tribunal, Principal Sub Court, Tindivanam. The respondents filed the said claim petition claiming a sum of Rs.10,00,000/- as compensation for the death of one Arjunan, who died in the accident that took place on 03.08.2011.

4.According to respondents, on 03.08.2011 at about 19.00 hours, while the deceased was standing on the extreme left side of the road near Chendur Village Bus Stop, the driver of the bus belonging to appellant, who was driving the bus from Villupuram towards Chennai, drove the same in a rash and



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negligent manner without blowing horn and dashed against the deceased and caused the accident. In the accident, the said Arjunan sustained fatal injuries on his head. Immediately after the accident, he was admitted in the Government Hospital, Tindivanam and thereafter he was referred to Jipmer Hospital, Pondicherry. On the way to Jipmer Hospital, Pondicherry, the said Arjunan succumbed to injuries. Therefore, the respondents filed the said claim petition claiming a sum of Rs.10,00,000/- as compensation against the appellant.

5.The appellant filed counter statement and denied all the averments made by the respondents. According to the appellant, the accident has not occurred as alleged by the respondents. The driver of the bus drove the same with due care and caution observing the traffic rules and he was not rash and negligent at the time of accident. The deceased only suddenly crossed the GST four lane road without following the traffic rules. On seeing this, the driver of the bus belonging to appellant applied brake and stopped the bus. In spite of best efforts taken by the driver of the bus, the said Arjunan came and hit the bus and invited the accident. Therefore, the driver of the bus was not responsible for the accident. The right side head light of the bus was damaged, which confirms the negligence on the part of the deceased. The driver of the bus belonging to appellant was not possessing driving license at the time of accident. Therefore, the appellant is not liable to pay any compensation to the respondents. The respondents have to prove the age, avocation and income of the deceased by producing valid documents. 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 2nd respondent examined himself as P.W.1 and one Arumugam, eyewitness to the accident was examined as P.W.2 and 2 documents were marked as Exs.P1 & P2. On behalf of the appellant, the driver of the bus was examined as R.W.1 and one Sundharamoorthy, Junior Assistant from Tindivanam R.T.O. was examined as R.W.2 and Motor Vehicle Inspector report was marked as Ex.R1.

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 and directed the appellant to pay a sum of Rs.8,77,000/- as compensation to the respondents.

8.Against the said award dated 02.11.2012 made in M.C.O.P.No.453 of 2011, the appellant has come out with the present appeal.



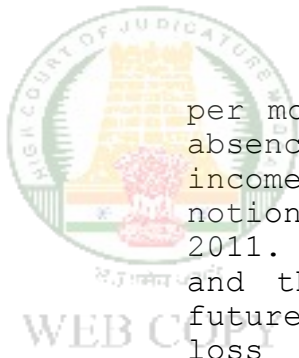
9.The learned counsel appearing for the appellant contended that the accident has occurred only due to the negligence on the part of the deceased. The driver of the bus was examined as R.W.1 but the Tribunal failed to consider the evidence of R.W.1. The Tribunal erroneously fixed entire negligence on the part of the driver of the bus and directed the appellant to pay the compensation awarded by the Tribunal. The monthly income of the deceased fixed by the Tribunal at Rs.9,000/- is excessive. The total compensation awarded by the Tribunal at Rs.8,77,000/- is without any basis and prayed for setting aside the award passed by the Tribunal.

10.Though notice has been served on the 1st respondent and her name is printed in the cause list, there is no representation on behalf of her, either in person or through counsel.

11.Heard the learned counsel appearing for the appellant 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 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, they examined the 2nd respondent as P.W.1 and one Arumugam as P.W.2, who is an eyewitness to the accident and marked F.I.R. as Ex.P1, which was registered against the driver of the bus as Ex.P1. 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 and not due to the negligence on the part of the driver of the bus belonging to appellant. To prove the said contention, the driver of the bus belonging to appellant-Transport Corporation was examined as R.W.1 and official from Tindivanam R.T.O. was examined as R.W.2. The appellant has not examined any independent witness to prove their contention. The Tribunal considering evidence of P.W.2, who is an independent eyewitness and Ex.P1/F.I.R., which was registered against the driver of the bus, held that accident has occurred only due to rash and negligent driving by the driver of the bus belonging to appellant-Transport Corporation holding that R.W.1/driver of the bus is an interested witness, whereas P.W.2 is an independent eyewitness and also the appellant has not examined any independent eyewitness to prove their contention. 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, it is the contention of the respondents that at the time of accident the deceased was aged 51 years was doing Firewood Business and an Agriculturist, earning a sum of Rs.10,000/-



per month. They failed to prove the said contention. In the absence of any material evidence with regard to avocation and income, the Tribunal fixed a sum of Rs.9,000/- per month as notional income of the deceased. The accident is of the year 2011. The deceased was aged 51 years at the time of accident and the Tribunal has not granted any enhancement towards future prospects and awarded a sum of Rs.7,92,000/- towards loss of dependency. The Tribunal considering the entire materials on record, has awarded a sum of Rs.8,77,000/- as compensation to the respondents which is just and proper and the same is hereby confirmed.

14. In the result, this Civil Miscellaneous Appeal is dismissed and a sum of Rs.8,77,000/- 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.453 of 2011 on the file of the Motor Accidents Claims Tribunal, Principal Sub Court, Tindivanam. On such deposit, the respondents 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. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

krk
To

The Principal Subordinate Judge,
Motor Accidents Claims Tribunal,
Tindivanam.

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

+1cc to Mr.K.J.Sivakumar, Advocate SR.No. 40980

C.M.A.No.615 of 2014

SV(CO)
A.SK(01.09.2021)