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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 17.12.2020

Pronounced On : 23.12.2020

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)No.721 of 2016

and

C.M.P. (MD)No.7262 of 2016

Tamil Nadu State Transport Corporation Limited,
Through its Managing Director,
Office at Vannarpettai,
Tirunelveli-627 003

... Appellant / Respondent

Vs.

1.Krishnan

2.Seethalakshmi

3.Suresh Perumal

: Respondents /Petitioners

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree made in M.C.O.P.No.1098 of 2013, dated 12.08.2014 on the file of the Motor Accident Claims Tribunal/I Additional District Court, Tirunelveli.

For Appellant : Mr.P.Prabhakaran

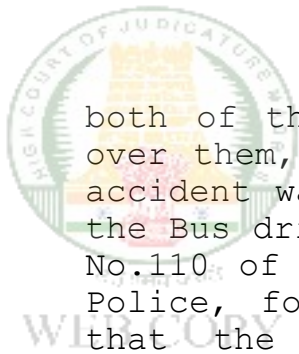
For R1 to R3 : Mr.T.Selvakumaran

J U D G M E N T

The Civil Miscellaneous Appeal has been preferred against the award made in M.C.O.P.No.1098 of 2013, dated 12.08.2014 on the file of the Motor Accident Claims Tribunal/I Additional District Court, Tirunelveli.

2.Admittedly, the first respondent is the father, the second respondent is the mother and the third respondent is the brother of the deceased Ramesh Perumal and they have laid the claim petition, claiming compensation for the death of the said Ramesh Perumal, who died in a Motor Accident.

3.The case of the claimants is that on 16.04.2013, when the deceased Ramesh Perumal was proceeding in a Motor Cycle bearing registration No. TN 72 AJ 9934 with his friend as pillion rider, at about 07.40.pm, at Trivandrum to Tirunelveli Main Road from East to West, a Bus bearing registration No.TN 72 N 0924, which came behind the Motor Cycle, in a rash and negligent manner and without sounding horn, dashed against the said two wheeler and as a result of which,



both of them fell down from the Motor Cycle and the Bus tyre ran over them, that both of them had died on the spot itself, that the accident was occurred only due to the rash and negligent driving of the Bus driver and hence, a case was registered against him in Crime No.110 of 2013, of Traffic Investigation Wing of Tirunelveli City Police, for the offence punishable under Section 304 (A) IPC and that the criminal case is pending before the jurisdictional Magistrate Court.

4.It is their further case that the deceased Ramesh Perumal had completed B.E Mechanical Engineering and he was waiting for a job in a foreign country, that he was aged only 22 years at the time of accident that they were depending upon the deceased, as he alone was a Engineering Graduate in their family and that therefore, they have been claiming a sum of Rs.1 Crore as compensation.

5.The defence of the Appellant Corporation is that on 16.04.2013, at about 07.40.pm, when the Bus driver was proceeding in Trivandrum Road at Murugankurichi, the deceased, who was riding Motor Cycle came behind the Bus, in a rash and negligent manner and suddenly tried to over-take the Bus through the left mud road and rode over the heaped sand and as a result of which, he had lost his balance and the Motor Cycle got in touch with the left side body of the Bus, that both rider and the pillion rider had fallen down and the left side back tyre of the Bus ran over them and that the entire accident had occurred only due to the rash and negligent driving of the two wheeler and the Bus driver was not at fault. It is their further case that the compensation claimed is highly excessive and exorbitant.

6.During enquiry, the claimants have examined the first respondent/first petitioner as P.W.1 and one Kandasamy alleged to be the occurrence witness as P.W.2 and exhibited 16 documents as Ex.P.1 to Ex.P.16. The Appellant Corporation has examined its driver Muthu as R.W.1 and adduced no documentary evidence.

7.The learned trial Court, upon considering the evidence, both oral and documentary, came to the conclusion that the Bus driver was solely responsible for the accident and passed an award, directing the appellant to pay compensation of Rs.9,83,000/- with interest at 7.5% per annum. Aggrieved by the said award, the transport Corporation has preferred the present appeal.

8.The Points for consideration are:

(i) Whether the trial Court erred in deciding that the Bus driver was solely responsible for the accident, without considering the manner of accident and the evidence of the Bus driver ?

(ii) Whether the quantum of compensation arrived at by the tribunal is proper and is in accordance with law?

(iii) Whether the impugned award dated 12.08.2014 is liable to be set aside ?



Point No.1 :

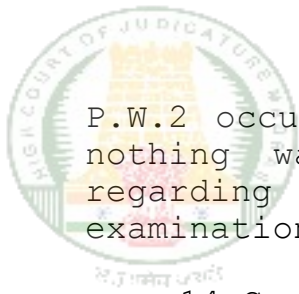
9.The learned counsel appearing for the appellant would content that the tribunal has committed an error in deciding that the Bus driver was solely responsible only on the basis of mere surmises and conjectures, that the trial Court has not taken into consideration that the deceased two wheeler rider along with pillion rider came behind the bus in a rash and negligent manner and suddenly tried to over take the Bus through left side mud road and rode over the heaped sand and that the two wheeler rider alone was responsible for the accident.

10.The claimants, in an attempt to prove their case, have examined P.W.2/Kandhasamy brother of the pillion rider Srinivasan, who had also died in the accident. P.W.2, in his evidence before the tribunal, would in clear terms, reiterate the version of the claimants and according to him, on 16.04.2013 at about 07.30.pm, he was proceeding in his motor cycle behind the motor cycle driven by the deceased Ramesh Perumal with his brother Srinivasan as pillion rider, that at about 07.40. pm opposite to Sathya Agency, the Bus bearing Registration No. TN 72 N 0924, which came behind him in a rash and negligent manner had over taken him and while over taking the other two wheeler dashed against it and as a result of which, both of them had fallen down and that the left back tyre ran over them and both of them had died on the spot itself.

11.In cross examination, he would say that the accident was occurred in the road and that he was proceeding behind the deceased. He would deny the suggestion that the accident was occurred as the Motor Cycle rider had negligently turned the two wheeler, that Bus driver had driven the Bus slowly and carefully and that the two wheeler rider was responsible for the accident. More over, it was suggested to P.W.2 that his deceased brother had proceeded in the two wheeler with three other persons and that is why the accident was occurred, he would deny the said suggestion specifically.

12. It is pertinent to mention that the above plea was not at all whispered anywhere in the counter statement. As already pointed out, the appellant has examined their driver R.W.1 Muthu and he would reiterate the version putforth in the counter statement. But in cross examination, he would admit that FIR and charge sheet have been laid against him, that he has not received any receipt for lodging the police complaint, that he has not sent any compliant through post, that he was suspended for a month period and that he had already appeared before the criminal Court for the present accident.

13.Admittedly FIR was lodged against the Bus driver and after investigation, a final report was also laid against him. The appellant has not chosen to examine the conductor of the Bus or any



P.W.2 occurrence witness was cross examined by the appellant side, nothing was elicited in their favour. The evidence of P.W.2 regarding negligence aspect was not at all shaken during his cross examination.

14.Considering the above, the findings of the trial Court that the Bus driver alone was responsible for the accident cannot be found fault with and accordingly, the above point is answered.

Point Nos. 2 and 3:

15.Though the claimants have claimed a sum of Rs.1 Crore as compensation, the trial Court has awarded total compensation of Rs.9,83,000/-. Though the appellant has taken a stand that the amount awarded is excessive and out of the proportion, they have not elaborated anything further.

16.Admittedly, the deceased Ramesh Perumal was a Bachelor on the date of accident. The trial Court by relying Ex.P.11/driving license along with Ex.P.15/Postmortem certificate, has rightly fixed the age of the deceased as 23 years at that time. The claimants have produced B.E.Mechanical Engineering completion certificate under Ex.P.6, completion of Computer Courses, Basic programme and HTML under Ex.P.7, Inplant training certificate issued by the Maruthi Suzuki limited under Ex.P.8 and his B.E degree issued by the Anna University under Ex.P.9. According to the claimants, after completion of Engineering Course, he was waiting for a job in a Foreign Country.

17.Considering the educational qualifications and scope of employment, the trial Court has rightly fixed the monthly income at Rs.9,000/- and on applying the legal dictum laid by the Honourable Supreme Court in **Sarla Verma and others Vs. Delhi Transport Corporation and another** reported in **AIR 2009 SC 3104** , adopted the multiplier 17 and after deducting 50% of the income towards personal expenses of the deceased, quantified the loss of dependency at Rs.9,18,000/-. The trial Court has also granted a sum of Rs.10,000/- towards funeral expenses; Rs.5,000/- towards transportation charges and loss of clothes and articles and Rs.50,000/- towards loss of love and affection.

18.In **National Insurance Company Limited Vs. Pranay Sethi and others** reported in **2017 ACJ 2700**, the Honourable Supreme Court has permitted to award Rs.40,000/- towards spousal consortium. But the Honourable Supreme Court in **Magma General Insurance Company Ltd, Vs. Nanu Ram alias Chuhru Ram and others** reported in **(2018) 18 SCC 130**, and **the New India Assurance Company Ltd., Vs. Smt.Somwati and others**, passed in **Civil Appeal No.3093 of 2020 and batch, dated 07.09.2020** case has permitted the spousal consortium to be awarded to the surviving spouse, parental consortium to be awarded to the children upon the premature death of their parents and filial



consortium to be awarded to the parents for the loss of their children at the same amount that is fixed in **Pranay Sethi's** case. Applying the above legal dictum, the claimants 1 and 2, who are parents are entitled to get Rs.40,000/- each towards loss of consortium, funeral expenses at Rs.15,000/- and Rs.15,000/- towards loss of estate under the conventional heads and on addition, the same would exceed the amount already awarded by the tribunal. The respondents/claimants have neither challenged the quantum fixed by the tribunal nor advanced any arguments in this regard. Considering the above, this Court decides that the compensation awarded is liable to be sustained and that the appeal, which is devoid of merits, is liable to be dismissed. Considering the other facts and circumstances, this Court further decides that the parties are to be directed to bear their own costs and the above points are answered accordingly.

19.In the result, this Civil Miscellaneous Appeal is dismissed and the award dated 12.08.2014 passed in M.C.O.P.No.1098 of 2013 on the file of the Motor Accident Claims Tribunal/I Additional District Court, Tirunelveli is confirmed. Parties are directed to bear their own costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

das

To,

1.The I Additional District Judge,
Motor Accident Claims Tribunal
Tirunelveli.

2.The Record Keeper,
Vernacular Records Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1cc to Mr.T.Selvakumaran, Advocate Sr.No.27001

+1cc to Mr.P.Prabhakaran, Advocate Sr.No.26986

C.M.A (MD) No.721 of 2016

and

C.M.P. (MD) No.7262 of 2016

MJ (CO)

NR (01/02/2021) 5P : 6C

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