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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.03.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1067 of 2021
and C.M.P.No.5624 of 2021

The Managing Director,
Tamil Nadu State Transport Corporation Limited,
Villupuram. .. Appellant/Respondent

Vs.

1.Parameshwari

2.Minor Praveen Kumar

3.Minor Prasanna Kumar

4.Minor Dhanushka

(Minors rep. by their mother/guardian, 1st respondent)

Thailammal (died)

Dhanapal (died)

.. Respondents/Appellants

Thailammal (died) W/o.Dhanapal

Dhanapal (Died) S/o.Chinnapillai

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 30.06.2020 made in M.C.O.P. No.82 of 2016, on the file of the Special District Court, (Motor Accidents Claims Tribunal), Villupuram.

For Appellant : Mr.K.J.Sivakumar

J U D G M E N T

(The matter is heard through "Video Conferencing/Hybrid mode")

This Civil Miscellaneous Appeal has been filed by the appellant-Transport Corporation to set aside the award of the Tribunal dated 30.06.2020 made in M.C.O.P. No.82 of 2016, on the file of the Special District Court, (Motor Accidents Claims Tribunal), Villupuram.



2.The appellant is the respondent in M.C.O.P.No.82 of 2016, on the file of the Special District Court, (Motor Accidents Claims Tribunal), Villupuram. Initially the respondents/claimants 1 to 4 along with Thailammal and Dhanapal/claimants 5 and 6, filed the said claim petition, claiming a sum of Rs.25,00,000/- as compensation for the death of one Narayanan, who died in the accident that took place on 08.01.2015. Pending claim petitions, the 5th and 6th claimants who are the parents of the deceased Narayanan died.

3.According to the respondents, on the date of accident, when the deceased Narayanan was riding a Bike bearing Registration No.PY-01-0020 near Thirukoilur Lake at Thirukoilur to G.Ariyur road, the driver of the Bus bearing Registration No.TN-32-N-2387 owned by the appellant-Transport Corporation drove the same in a rash and negligent manner from Thirukoilur to G.Ariyur road and dashed on the Bike driven by the said Narayanan and caused the accident. In the accident, the said Narayanan sustained fatal injuries. The accident occurred only due to rash and negligent driving by driver of the Bus. Hence, the respondents filed the claim petition claiming compensation for the death of Narayanan against the appellant as owner of the Bus involved in the accident.

4.The appellant-Transport Corporation filed counter statement and denied all the averments made by the respondents in the claim petition, including the manner of accident. According to the appellant, on the date of accident, when the Bus owned by the appellant-Transport Corporation was driven by its driver towards Thulampoondi, carefully with due care and caution by observing all traffic rules, near Thirukovilur turning, on seeing the rash and negligent driving of Bike by the deceased Narayanan, the driver of the Bus stopped the vehicle. In spite of the same, the deceased rider of Bike dashed on the left side of the Bus and invited the accident. The accident occurred only due to the negligent riding of the deceased/rider of the Bike and hence, the appellant is not liable to pay any compensation to the respondents. In any event, the claim petition is bad for non-joinder of owner and insurer of the Bike. The respondents have to prove that at the time of accident, the deceased possessed valid driving license to ply the vehicle. The respondents also have to prove the age, avocation and income of the deceased to claim compensation. The total compensation claimed by the respondents is excessive. Before the death of Narayanan, he has filed a claim petition in M.C.O.P.No.199 of 2015 before the MACT Villupuram (PSJ), claiming compensation for Rs.16,00,000/- for the same accident. Hence prayed for dismissal of the claim petition.

5.Before the Tribunal, the 1st respondent examined herself



as P.W.1, examined one Parthiban, eye-witness as P.W.2 and marked 6 documents as Exs.P1 to P6. The appellant examined one Kumar, driver of the Bus involved in the accident as R.W.1, but did not mark any document.

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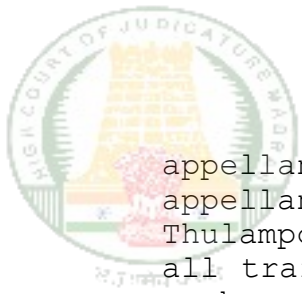
6.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by driver of the Bus owned by the appellant-Transport Corporation and directed the appellant to pay a sum of Rs.18,77,500/- as compensation to the respondents.

7.To set aside the award of the Tribunal dated 30.06.2020 made in M.C.O.P. No.82 of 2016, 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 failed to note that the accident has occurred only due to rash and negligent riding by the deceased Narayanan/rider of the Bike. P.W.1 is not an eye-witness. The Tribunal failed to consider the evidence let in by the appellant and erroneously fixed negligence on the driver of the Bus merely relying on the evidence of P.W.1 and FIR. It is well settled that negligence cannot be fixed relying on the FIR or judgments of the Criminal Court. The Tribunal has to independently consider the evidence let in before it. The appellant examined the driver of the Bus and proved that driver of the Bus was not responsible for the accident and that the accident has occurred only due to the negligence on the part of the deceased Narayanan. In the absence of any documents by the respondents to prove the age, avocation and income of the deceased Narayanan, the monthly income of Rs.10,000/- fixed by the Tribunal and a sum of Rs.1,20,000/- granted towards loss of parental consortium are excessive. The total compensation awarded by the Tribunal is excessive and prayed for setting aside the award of the Tribunal.

9.Heard the learned counsel appearing for the appellant-Transport Corporation and perused the materials available on record.

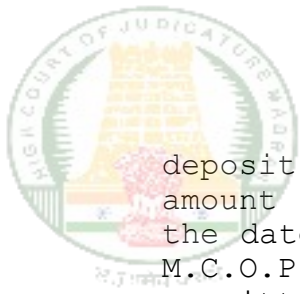
10.It is the case of the respondents that while the deceased Narayanan was riding a Bike near Thirukoilur Lake at Thirukoilur to G.Ariyur road, the driver of the Bus owned by the appellant-Transport Corporation drove the same in a rash and negligent manner and dashed on the rear side of the Bike driven by the deceased Narayanan and caused the accident. To substantiate this contention, the 1st respondent, wife of the deceased Narayanan examined herself as P.W.1, examined Parthiban, eye-witness to the accident as P.W.2 and marked FIR as Ex.P1. On the other hand, it is the contention of the



appellant/Transport Corporation that when the Bus owned by the appellant-Transport Corporation was driven by its driver towards Thulampoondi, carefully with due care and caution by observing all traffic rules, near Thirukovilur lake turning, on seeing the rash and negligent driving of Bike by the deceased Narayanan, the driver of the Bus stopped the vehicle. In spite of the same, the deceased/rider of Bike dashed on the left side of the Bus and invited the accident. To prove their case, the appellant examined the driver of the Bus as R.W.1. The appellant has not examined any independent witness to prove their case. R.W.1, the driver of the Bus is an interested witness. The Tribunal considering the evidence of P.W.2, eye-witness and FIR which was registered against the driver of the Bus, failure on the part of the appellant to examine any independent eye-witness and in the absence of any objection given by the appellant to the FIR being registered against the driver of the Bus, held that the accident has occurred only due to rash and negligent driving by driver of the Bus owned by the appellant/Transport Corporation and directed the appellant to pay the compensation to the respondents. There is no error in the said finding of the Tribunal warranting interference by this Court.

11.As far as quantum of compensation is concerned, it is the case of the respondents that the deceased was working as a Mason and Agriculturist and was earning a sum of Rs.15,000/- per month at the time of accident. They did not file any document to prove the same. In the absence of any evidence to prove the avocation and income, the Tribunal fixed a sum of Rs.10,000/- per month as notional income of the deceased and granted 25% enhancement towards future prospects. The accident is of the year 2015. The cost of living has increased enormously and salary of even unskilled workers has increased substantially. Considering the year of accident and nature of work done by the deceased, the monthly income fixed by the Tribunal is not excessive. The Tribunal considering the fact that the deceased was aged 40 years at the time of accident, rightly applied the multiplier '15' and after deducting 1/4th towards personal expenses of the deceased, awarded compensation towards loss of dependency. The Tribunal awarded a sum of Rs.40,000/- each towards parental consortium to the respondents 2 to 4 who are the minor children of the deceased Narayanan. The same is not excessive. The amounts awarded by the Tribunal towards conventional heads are also not excessive, warranting interference by this Court.

12.In the result, this Civil Miscellaneous Appeal is dismissed and the amount awarded by the Tribunal at Rs.18,77,500/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit is confirmed. The appellant-Transport Corporation is directed to



deposit the award amount along with interest and costs, less the amount 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.82 of 2016. On such deposit, the 1st respondent is permitted to withdraw her share of the award amount, as per the ratio of apportionment fixed 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 shares of the minor respondents 2 to 4 are directed to be deposited in any one of the Nationalized Bank, till the minors attain majority. The 1st respondent, mother of the minor respondents 2 to 4 is permitted to withdraw the accrued interest, once in three months for the welfare of the minor respondents 2 to 4. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar (SSA)

//True Copy//

Sub Assistant Registrar

gsa

To

1.The Special District Judge,
(Motor Accident Claims Tribunal),
Villupuram.

+lcc to Mr.K.J.Sivakumar, Advocate, S.R.No. 18996

C.M.A.No.1067 of 2021
and
C.M.P.No.5624 of 2021

NK(CO)
GN(28/10/2021)