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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.03.2021

CORAM :

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.901 of 2021
and
CMP.No.5177 of 2021

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

Vs.

1.Chandrakumari
2.Minor.Arunachalam
3.Minor.Aswitha
(Minor respondents 2 & 3 are represented
by their next friend, natural guardian and
Mother Chandrakumari, 1st respondent herein)
4.Muniyammal ...Respondents / Petitioners

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 03.02.2020 made in M.C.O.P.No.107 of 2015, on the file of the Motor Accidents Claims Tribunal, III Additional District Court, Kallakurichi, Villupuram.

For Appellant : Mr.K.J.Sivakumar

J U D G M E N T

The matter is heard through "Video Conferencing/Hybrid mode".

2.This Civil Miscellaneous Appeal has been filed to set aside the award dated 03.02.2020 made in M.C.O.P.No.107 of 2015, on the file of the Motor Accidents Claims Tribunal, III Additional District Court, Kallakurichi, Villupuram.



3.The appellant is the respondent in M.C.O.P.No.107 of 2015, on the file of the Motor Accidents Claims Tribunal, III Additional District Court, Kallakurichi, Villupuram. The respondents filed the above said claim petition claiming a sum of Rs.10,00,000/- as compensation for the death of one Ponnan, who died in the accident that took place on 08.07.2012.

4.According to respondents, on 08.07.2012 at about 01.40 A.M., while the deceased Ponnan was travelling in the motorcycle near Akkarapalayam Ganesh Rice Mill, the driver of the bus bearing Registration No.TN 32 N 1615 belonging to appellant drove the same in a rash and negligent manner and dashed against the said Ponnan and caused the accident. In the accident, the said Ponnan died. Therefore, the respondents, filed the said claim petition claiming a sum of Rs.10,00,000/- as compensation for the death of said Ponnan against the appellant-Transport Corporation.

5.The appellant-Transport Corporation filed counter statement and denied all the averments made by the respondents. The appellant-Transport Corporation denied the manner of accident as alleged by the respondents. According to the appellant, on 08.07.2012 at about 13.15 hours while the driver of the bus was driving the bus towards Kallakurichi from Mayampadi near a curve at Akkarampalayam, he saw the persons in the motorcycle bearing Registration No.TN 28 AX 0928 coming in a rash and negligent manner under the influence of alcohol. On seeing this, the driver of the bus halted the bus at the extreme left side of the road. In spite of the bus being stopped at the extreme left side of the road, the rider of the motorcycle drove the same in a rash and negligent manner, crossed the centre median line, came to the right side of the road and dashed on the front side of the bus and invited the accident. Therefore, the accident has occurred only due to the negligence on the part of the rider of the motorcycle and there was no negligence on the part of the driver of the bus. The rider of the motorcycle does not know how to drive the motorcycle and he was not possessing driving license at the time of accident and also not wearing helmet at the time of accident. The owner and insurer of the motorcycle have to be impleaded as necessary parties in the claim petition. The appellant-Transport Corporation denied the age, avocation and income of the deceased. In any event, the quantum of compensation claimed by the respondents is highly excessive and prayed for dismissal of the claim petition.



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6. Before the Tribunal, the 1st respondent examined herself as P.W.1 and one John Peter, eyewitness to the accident was examined as P.W.2 and 7 documents were marked as Exs.P1 to P7. 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.15,06,000/- as compensation to the respondents.

8. To set aside the award dated 03.02.2020 made in M.C.O.P.No.107 of 2015, the appellant has come out with the present appeal.

9. The learned counsel appearing for the appellant contended that the Tribunal ought not to have considered the evidence of P.W.1, who is not an eyewitness to the accident. The Tribunal erroneously fixed negligence on the driver of the bus merely relying on the F.I.R. It is well settled that negligence cannot be fixed relying on the F.I.R. or judgments of the Criminal Court. The Tribunal has to independently consider the evidence let in before it. The respondents failed to prove the age, avocation and income of the deceased by producing valid documents. In the absence of any material evidence to prove the avocation and income, a sum of Rs.7,000/- per month fixed by the Tribunal as notional income of the deceased is excessive. The total compensation awarded by the Tribunal at Rs.15,06,000/- is highly excessive and prayed for setting aside the award passed by the Tribunal.

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

11. It is the case of the respondents that at the time of accident, while the deceased Ponnan was travelling in the motorcycle near Akkarapalayam Ganesh Rice Mill, the driver of the bus bearing Registration No.TN 32 N 1615 belonging to appellant drove the same in a rash and negligent manner and dashed against the said Ponnan and caused the accident. To prove the said contention, the 1st respondent examined herself as



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P.W.1, one John Peter, eyewitness to the accident was examined as P.W.2 and marked F.I.R., which was registered against the driver of the bus belonging to appellant as Ex.P1 and other documents. On the other hand, it is the case of the appellant-Transport Corporation that while the driver of the bus was driving the bus towards Kallakurichi from Mayampadi near a curve at Akkarampalayam, he saw the persons in the motorcycle bearing Registration No.TN 28 AX 0928 driving in a rash and negligent manner under the influence of alcohol. On seeing this, the driver of the bus halted the bus at the extreme left side of the road. In spite of the bus being stopped at the extreme left side of the road, the rider of the motorcycle drove the same in a rash and negligent manner, crossed the centre median line, came to the right side of the road and dashed on the front side of the bus and invited the accident. The appellant has not examined any witness to prove their case that the accident has occurred only due to negligence on the part of the deceased. The appellant or the driver of the bus has not filed any objection to the F.I.R., which was registered against the driver of the bus and has not filed any complaint against the deceased. Further, the appellant has not proved by acceptable evidence that the deceased was not wearing helmet at the time of accident. The Tribunal considering the evidence of P.W.1 & P.W.2 and contents of Ex.P1/F.I.R. and failure on the part of the appellant for not filing any objection to the F.I.R. and not filing any complaint against the deceased, held that accident has occurred only due to the negligence on the part of 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.

12.As far as quantum of compensation is concerned, it is the claim of the respondents in the claim petition that at the time of accident, the deceased was aged 35 years, working as Automobile Painter and was earning a sum of Rs.9,000/- per month. They did not file any document to prove the same. In the absence of any material evidence to prove the avocation and income of the deceased, the Tribunal considering the year of accident and age of the deceased, fixed a sum of Rs.7,000/- per month as notional income of the deceased, which is not excessive. As per Ex.P2/postmortem certificate, the deceased was aged 35 years at the time of accident. The Tribunal, following the judgments of the Hon'ble Apex Court reported in 2009 (2) TN



MAC 1 SC [Sarla Verma & Others vs. Delhi Transport Corporation & another] and 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd. v. Pranay Sethi and others] rightly applied multiplier '16' and granted 40% enhancement towards future prospects. There are four dependants of the deceased. The Tribunal has rightly deducted 1/4th towards personal expenses of the deceased and awarded a sum of Rs.14,11,200/- towards loss of dependency and the same is not excessive. The Tribunal considering entire materials on record, has awarded a sum of Rs.15,06,000/- as compensation to the respondents, which is not excessive warranting interference by this Court.

13. In the result, this Civil Miscellaneous Appeal is dismissed and a sum of Rs.15,06,000/- 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.107 of 2015, on the file of the Motor Accidents Claims Tribunal, III Additional District Court, Kallakurichi, Villupuram. On such deposit, the respondents 1 & 4 are permitted to withdraw their respective 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 share of the minor respondents 2 & 3 are directed to be deposited in any one of the Nationalized Banks, till the minor respondents 2 & 3 attain majority. On such deposit, the 1st respondent, being the Mother of the minor respondents 2 & 3 is permitted to withdraw the accrued interest once in three months for the welfare of the minor respondents 2 & 3. Consequently the connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar

// True Copy //

Sub Assistant Registrar

krk



To

The III Additional District Judge,
Motor Accident Claims Tribunal,
Kallakurichi, Villupuram.

+1cc to Mr.K.J.Sivakumar, Advocate SR.No.16658

C.M.A.No.901 of 2021

SPD(CO)
RVM(08/11/2021)