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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.03.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.NO.1179 OF 2021

AND

C.M.P.NO.6000 OF 2021

The Manging Director,
Tamil Nadu State Transport Corporation Division I,
Villupuram.

.. Appellant

Vs.

1.Sumithra devi

2.Kowshik (Minor)

Rep. by mother and next friend
the 1st petitioner herein

.. Respondents 1 & 2/
Petitioners

3.Rajaraman

4.Jeyalakshmi

.. Respondents 3 & 4/
Respondents 2 & 3

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Award and decree dated 03.07.2019 made in M.C.O.P. No.147 of 2010, on the file of the Motor Accidents Claims Tribunal, (Principal District Court), Puducherry.

For Appellant : Mr.K.J.Sivakumar



J U D G M E N T

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

WEB COPY This Civil Miscellaneous Appeal has been filed by the appellant-Transport Corporation to set aside the award of the Tribunal dated 03.07.2019 made in M.C.O.P. No.147 of 2010, on the file of the Principal District Court, (Motor Accidents Claims Tribunal), Puducherry.

2.The appellant is the 1st respondent in M.C.O.P.No.147 of 2010, on the file of the Principal District Court, (Motor Accidents Claims Tribunal), Puducherry. The respondents 1 and 2/claimants filed the said claim petition, claiming a sum of Rs.60,00,000/- as compensation for the death of one Manikandan, who died in the accident that took place on 26.11.2009. The respondents 3 and 4 who are the parents of the deceased were impleaded as respondents 2 and 3 in the claim petition.

3.According to the respondents, on the date of accident, when the deceased Manikandan was riding his Motorcycle bearing Registration No.TN-04-R-2821 on the extreme left side of the road from Pondicherry to Villupuram route, opposite to Balaji Lodge, the driver of the Bus bearing Registration No.TN-32-N-1811 owned by the appellant-Transport Corporation drove the same in a rash and negligent manner, dashed against the Motorcycle and caused the accident. In the accident, the deceased Manikandan was thrown out of his Motorcycle and the Bus ran over the head of the deceased, causing instantaneous death. The accident occurred only due to rash and negligent driving by driver of the Bus. Hence, the respondents 1 and 2 filed the claim petition claiming compensation against the appellant as owner of the Bus involved in the accident and the respondents 3 and 4 who are the parents of the deceased were impleaded as respondents 2 and 3 in the claim petition.

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 said Bus owned by the appellant-Transport Corporation was driven by its driver carefully near Villupuram Market Street, due to market crowd, the deceased overtook from the left side of the



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Bus in a rash and negligent manner by using his mobile phone and dashed against a Bullock Cart and fell over the left side body of the Bus and invited the accident. The accident occurred only due to the negligent riding of Motorcycle by the deceased Manikandan. Hence, the appellant is not liable to pay any compensation to the respondents. The deceased was a Police Constable. The Station House Officer, Traffic Police Station, Villupuram filed the FIR without common sense and has openly supported his department staff. The appellant informed the above facts to the Superintendent of Police, Villupuram. The passengers who traveled in the Bus at the time of accident gave statement to that effect. The respondents have to prove that the driver of the Bus possessed valid driving license at the time of accident. In any event, the respondents have to prove the age, avocation and income of the deceased to claim compensation and prayed for dismissal of the claim petition.

5.Before the Tribunal, the 1st respondent examined herself as P.W.1, examined one Sivamani eye-witness as P.W.2 and one Ulaganathan as P.W.3 and marked 12 documents as Exs.P1 to P12. The appellant examined the 3rd respondent/father of the deceased as R.W.1, but did not mark any document.

6.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by driver of the Bus and directed the appellant-Transport corporation to pay a sum of Rs.29,10,000/- as compensation to the respondents.

7.To set aside the award of the Tribunal dated 03.07.2019 made in M.C.O.P. No.147 of 2010, 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 the rash and negligent driving of Motorcycle by the deceased Manikandan. The Tribunal ought not to have relied upon the evidence of P.W.1 - wife of the deceased, who 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 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. In the absence of any documents by the respondents to prove the age, avocation and income of the deceased Manikandan, the monthly income of Rs.12,375/- fixed by the Tribunal is 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 on the date of accident, while the deceased Manikandan was riding his Motorcycle on the extreme left side of the road from Pondicherry to Villupuram route, opposite to Balaji Lodge, the driver of the Bus owned by the appellant-Transport Corporation drove the same in a rash and negligent manner, dashed against the Motorcycle and caused the accident. To substantiate this contention, the 1st respondent, wife of the deceased Manikandan examined himself as P.W.1, examined eye-witnesses to the accident as P.W.2 and marked FIR which was registered against the driver of the Bus as Ex.P1. On the other hand, it is the contention of the appellant/Transport Corporation that when the said Bus owned by the appellant-Transport Corporation was driven by its driver carefully near Villupuram Market Street, due to market crowd, the deceased overtook from the left side of the Bus in a rash and negligent manner by using his mobile phone and dashed against a Bullock Cart and fell over the left side body of the Bus and invited the accident. The accident occurred only due to the negligent riding of Motorcycle by the deceased Manikandan. Except examining the 3rd respondent/father of the deceased, the appellant did not examine the driver of the Bus or any independent witness to elucidate their case. The Tribunal considering the evidence of P.W.1, P.W.2 and FIR which was registered against the driver of the Bus, failure on the part of the appellant to examine the Driver, Conductor of the Bus or any independent eye-witness, in the absence of any objection given to the complaint lodged against the driver of the Bus, held that the driver of the Bus was rash and negligent 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.It is the case of the respondents that the deceased Manikandan was aged 27 years, working as a Police Constable in the Government of Tamil Nadu and was earning a sum of Rs.15,000/- per month at the time of accident. The respondents filed Ex.P12 - salary certificate of the deceased Manikandan for the month of December 2005 to substantiate the same. The Tribunal considering Ex.P12-salary certificate, rightly fixed the income of the deceased as Rs.12,375/- per month, granted 50% enhancement towards future prospects, applied the multiplier '17' and after deducting 1/4th towards personal expenses of the deceased, awarded compensation towards loss of dependency. The same is in order. 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.29,10,139/- together with interest at the rate of 6% 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.147 of 2010. On such deposit, the respondents 1, 3 and 4 are permitted to withdraw their 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 2nd respondent is directed to be deposited in any one of the Nationalized Bank, till the minor attains majority. The 1st respondent, mother of the minor 2nd respondent is permitted to withdraw the accrued interest, once in three months for the welfare of the minor 2nd respondent. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar

// True Copy //

Sub Assistant Registrar

gsa



To

1. The Principal District Judge,
(Motor Accident Claims Tribunal),
Puducherry.

2. The Section Officer,
VR Section,
High Court, Madras.

+1cc to M/s.K.J.Sivakumar, Advocate, S.R.No.20009

C.M.A.No.1179 of 2021
and
C.M.P.No.6000 of 2021

GMI(CO)
RLP(18/11/2021)