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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.899 of 2021

and

C.M.P.No.5165 of 2021

The Managing Director,
Tamil Nadu State Transport Corporation
Villupuram Limited,
No.3/137, Salamedu,
Vazhuthareddy & Post,
Villupuram Taluk - 605 402.

.. 2nd Respondent/Appellant

Vs.

1.Durai

2.Minnaladevi

3.Parthiban

4.Suganthi

Petitioners/Respondents

5.Iyyappan

.. 1st Respondent/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 13.01.2020 made in M.C.O.P.No.72 of 2017 on the file of the Motor Accidents Claims Tribunal, Sub Court, Madurantakam.

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 13.01.2020 made in M.C.O.P.No.72 of 2017 on the file of the Motor Accidents Claims Tribunal, Sub Court, Madurantakam.



3.The appellant is the 2nd respondent in M.C.O.P.No.72 of 2017 on the file of the Motor Accidents Claims Tribunal, Sub Court, Madurantakam. The respondents 1 to 4 filed the above said claim petition claiming a sum of Rs.45,00,000/- as compensation for the death of one Prabhudeva, who died in the accident that took place on 01.11.2016.

4.According to respondents 1 to 4, on 01.11.2016 at about 07.15 P.M., while the deceased Prabhudeva and his friend Anandbabu were traveling in the motorcycle bearing Registration No.TN 22 AP 2562 on the Madurantakam - Chunambedu road near Mithra Hospital, Illeedu Village, the 5th respondent-driver of the bus belonging to appellant-Transport Corporation bearing Registration No.TN 32 N 3731, who was driving the bus in a rash and negligent manner on the same direction, dashed behind the motorcycle in which the said Prabhudeva and his friend were traveling and caused the accident. In the accident, the said Prabhudeva and his friend Anandbabu sustained fatal injuries and died on the spot. Therefore, the respondents 1 to 4, filed the said claim petition claiming a sum of Rs.45,00,000/- as compensation for the death of said Prabhudeva against the 5th respondent and appellant-Transport Corporation.

5.The 5th respondent-driver of the bus remained exparte before the Tribunal.

6.The appellant-Transport Corporation filed counter statement and denied all the averments made by the respondents 1 to 4. The appellant-Transport Corporation denied the manner of accident as alleged by the respondents 1 to 4. According to the appellant, on 01.11.2016 at about 19.15 P.M., while the driver of the bus was driving the same at a moderate speed by following the road traffic rules towards Puducherry opposite to Mithra Hospital, Illeedu Village, the said Prabhudeva and his friend who were traveling in the motorcycle ahead of the bus belonging to appellant, suddenly without showing any signal turned the motorcycle to the right side. On seeing this, the driver of the bus controlled the bus. Eventhough, the driver of the bus controlled the bus, the motorcycle dashed on the centre portion of the front bumper of the bus, the said Prabhudeva and his friend fell down and invited the accident. Hence, the accident has occurred only due to negligence on the part of the rider of the motorcycle and the appellant is not liable to pay any compensation to the respondents 1 to 4. At the time of accident, the rider of the motorcycle was not possessing valid driving license and also not wearing helmet. The accident has occurred only due to the negligence on the part of the rider of the motorcycle and the respondents 1 to 4 are entitled to claim compensation only against the owner and insurer of the



motorcycle. The appellant-Transport Corporation denied the age, avocation and income of the deceased. In any event, the quantum of compensation claimed by the respondents 1 to 4 is excessive and prayed for dismissal of the claim petition.

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7. Before the Tribunal, the 1st respondent examined himself as P.W.1 and one Udayasankar, eyewitness to the accident was examined as P.W.2 and 15 documents were marked as Exs.P1 to P15. On behalf of the 5th respondent and appellant-Transport Corporation, the 5th respondent-driver of the bus examined himself as R.W.1 and no document was marked.

8. 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.21,96,176/- as compensation to the respondents 1 to 4.

9. To set aside the award dated 13.01.2020 made in M.C.O.P.No.72 of 2017, the appellant has come out with the present appeal.

10. The learned counsel appearing for the appellant contended that 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 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 appellant examined the driver of the bus as R.W.1 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. The respondents 1 to 4 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.18,622/- per month fixed by the Tribunal as notional income of the deceased is excessive. The amounts awarded by the Tribunal towards funeral expenses and loss of love and affection is excessive. The total compensation awarded by the Tribunal at Rs.21,96,176/- is highly excessive and prayed for setting aside the award passed by the Tribunal.

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

12. It is the case of the respondents 1 to 4 that at the time of accident, while the deceased Prabhudeva and his friend Anandbabu were traveling in the motorcycle on the Madurantakam - Chunambedu road near Mithra Hospital, Illeedu Village, the 5th



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respondent-driver of the bus belonging to appellant-Transport Corporation bearing Registration No.TN 32 N 3731, drove the bus in a rash and negligent manner on the same direction and dashed behind the motorcycle in which the said Prabhudeva and his friend were traveling and caused the accident. To prove the said contention, the 1st respondent examined himself as P.W.1, one Udayasankar, 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. On the other hand, it is the case of the appellant-Transport Corporation that while the driver of the bus was driving the same at a moderate speed towards Puducherry opposite to Mithra Hospital, Illeedu Village, the said Prabhudeva and his friend who were traveling in the motorcycle ahead of the bus belonging to appellant, suddenly without showing any signal turned the motorcycle to the right side. On seeing this, the driver of the bus controlled the bus. Eventhough, the driver of the bus controlled the bus, the motorcycle dashed on the centre portion of the front bumper of the bus and invited the accident. To prove the said contention, the appellant examined the 5th respondent, driver of the bus as R.W.1. R.W.1 is an interested witness and the appellant has not examined any other independent witness to prove their case that the accident has occurred only due to negligence on the part of the deceased. Further, 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, R.W.1, Ex.P1 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 1 to 4 in the claim petition that at the time of accident, the deceased was a Painter aged 23 years and was earning a sum of Rs.15,000/- per month. They did not file any document to prove the same. In the absence of any material evidence with regard to avocation and income of the deceased, the Tribunal fixed a sum of Rs.13,302/- per month as notional income of the deceased by following the judgment of Division Bench of this Court reported in 2019 (1) TNMAC 54 (DB), [Andal and others Vs. Avinav Kannan and other]. The accident occurred in the year 2016 and the monthly income fixed by the Tribunal is not excessive. The deceased was a bachelor aged 23 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 '18', granted 40% enhancement towards future prospects and deducted 50% towards personal expenses of the deceased. The Tribunal has not awarded any amount towards loss of estate. In view of the failure on the part of the Tribunal for not awarding any amount towards loss of estate, the excessive amounts awarded by the Tribunal towards funeral expenses and loss of love and affection are not interfered with.

13. In the result, this Civil Miscellaneous Appeal is dismissed and a sum of Rs.21,96,176/- awarded by the Tribunal as compensation to the respondents 1 to 4, 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.72 of 2017 on the file of the Motor Accidents Claims Tribunal, Sub Court, Madurantakam. On such deposit, the respondents 1 to 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. Consequently the connected Miscellaneous Petition is closed. No costs.

Sd/-
Deputy Registrar (P&A)

//True Copy//

Sub Assistant Registrar

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To

1. The Subordinate Judge,
Motor Accidents Claims Tribunal,
Madurantakam.

+1cc to Mr.J.Sivakumar, Advocate, S.R.No.16646

C.M.A.No.899 of 2021

PL(CO)
SU(18/11/2021)