



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.NO.902 OF 2021

AND

C.M.P.NO.5178 OF 2021

The Managing Director,
Tamil Nadu State Transport Corporation,
3/137, Salamedu,
Vazhuthareddy, Villupuram.

... Appellant/Respondent

.Vs.

1. S.Prabhakandhi
2. Minor. S.Soumiya
3. Minor. S.Saranraj

4. Minor. S.Sanjay
(Minor respondents 2 to 4 are represented
by their Mother and guardian, S.Prabhakandhi,
1st respondent herein)

5. P.Paranjothi
6. P.Anjalai

... Respondents/Petitioners

PRAYER:-

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 06.01.2020 made in M.C.O.P.No.3321 of 2017, on the file of the Motor Accidents Claims Tribunal, I Additional District and Sessions Court, Cuddalore.

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 06.01.2020 made in M.C.O.P.No.3321 of 2017, on the file of the Motor Accidents Claims Tribunal,

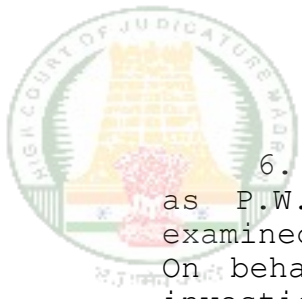


I Additional District and Sessions Court, Cuddalore.

3. The appellant is the respondent in M.C.O.P.No.3321 of 2017, on the file of the Motor Accidents Claims Tribunal, I Additional District and Sessions Court, Cuddalore. The respondents filed the above said claim petition claiming a sum of Rs.60,00,000/- as compensation for the death of one P.Sankar, who died in the accident that took place on 03.08.2017.

4. According to respondents, on 03.08.2017 at about 06.30 P.M., while the deceased P.Sankar was riding the motorcycle bearing Registration No.PY 01 BZ 8627 from East to West on the extreme left side of the OP Road, opposite to Jayalakshmi Petty Shop, the driver of the bus bearing Registration No.TN 32 N 2305 belonging to appellant, drove the bus from the opposite direction in a rash and negligent manner at high speed and dashed against the motorcycle driven by the said P.Sankar and caused the accident. In the accident, the said P.Sankar sustained multiple grievous injuries all over his body. Immediately after the accident, the said P.Sankar was taken to Rajah Muthiah Medical College Hospital, Annamalai Nagar. In spite of treatment, the said P.Sankar succumbed to injuries. Therefore, the respondents, filed the said claim petition claiming a sum of Rs.60,00,000/- as compensation for the death of said P.Sankar 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 03.08.2017, while the driver of the bus was driving the same on the extreme left side of the road at a moderate speed from Chidambaram to M.G.R.Junction after alighting and boarding the passengers at O.P.Hospital, Chidambaram Annamalai Nagar bus stop, he saw the rider of the motorcycle bearing Registration No.PY 01 BZ 8627 driving the same at a curve in a rash and negligent manner. On seeing this, the driver of the bus, applied brake and stopped the bus on the extreme left side of the road. On seeing the bus, the rider of the motorcycle, who was driving the same at an uncontrollable speed, could not able to control the motorcycle, skidded on the road, dragged and dashed on the front right side of the bus and invited the accident. At the time of accident, the said P.Sankar was not wearing helmet. The owner and insurer of the motorcycle driven by the said P.Sankar 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.



6. Before the Tribunal, the 1st respondent examined herself as P.W.1 and one Tharmaraj, eyewitness to the accident was examined as P.W.2 and 6 documents were marked as Exs.P1 to P6. On behalf of the appellant-Transport Corporation, one Selvam, investigator of the appellant was examined as R.W.1 and final report was marked as Ex.R1.

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.17,67,800/- as compensation to the respondents.

8. To set aside the award dated 06.01.2020 made in M.C.O.P.No.3321 of 2017, 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.7,500/- per month fixed by the Tribunal as notional income of the deceased is excessive. The total compensation awarded by the Tribunal at Rs.17,67,800/- 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 P.Sankar was riding the motorcycle bearing Registration No.PY 01 BZ 8627 from East to West direction on the extreme left side of the OP Road, opposite to Jayalakshmi Petty Shop, the driver of the bus bearing Registration No.TN 32 N 2305 belonging to appellant, drove the bus from the opposite direction in a rash and negligent manner at high speed and dashed against the motorcycle driven by the said P.Sankar and caused the accident. To prove the said contention, the 1st respondent examined herself as P.W.1, one Tharmaraj, 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 same on the extreme left side of the road at a moderate speed from Chidambaram to M.G.R.Junction after alighting and boarding the passengers at O.P.Hospital, Chidambaram Annamalai Nagar bus stop, he saw the rider of the motorcycle bearing Registration No.PY 01 BZ 8627 driving the same at a curve in a rash and negligent manner. On seeing this, the driver of the bus, applied brake and stopped the bus on the extreme left side of the road. On seeing the bus, the rider of the motorcycle, who was driving the same at an uncontrollable speed, could not able to control the motorcycle, skidded on the road, dragged and dashed on the front right side of the bus and invited the accident. To prove the said contention, the appellant examined one Selvam, investigator of the appellant as R.W.1 and marked the final report as Ex.R1. 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. The appellant relied on Ex.R1/final report to show that the accident has occurred only due to negligence on the part of the deceased and the case was closed as charges abated. The appellant or the driver of the bus has not filed any complaint against the deceased and also not proved by acceptable evidence that the deceased was not wearing helmet at the time of accident. The evidence on oath must be given more weightage than the materials on record. In the present case, P.W.2/eyewitness has deposed that the accident has occurred only due to the negligence on the part of the driver of the bus. Therefore, the Tribunal considering the evidence of P.W.1, P.W.2, R.W.1, Ex.P1 and failure on the part of the appellant for 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 an Auto Driver aged 29 years and was earning a sum of Rs.15,000/- per month. To prove the said contention, the respondents produced Ex.P5/Identity Card of the deceased P.Sankar issued by the Cuddalore District Auto Workers Association. The respondents have neither produced the driving license of the deceased nor examined the author of Ex.P5. In the absence of any document 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 six dependants of the deceased. The Tribunal erroneously deducted 1/5th towards personal expenses of the deceased instead of deducting 1/4th and awarded a sum of Rs.16,12,800/- towards loss of dependency. The Tribunal has not awarded any amount towards loss of estate. In view of the same, 1/5th deduction made by the Tribunal towards personal expenses of the deceased instead of 1/4th is not interfered with. The Tribunal considering entire materials on record, has awarded a sum of Rs.17,67,800/- 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.17,67,800/- 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.3321 of 2017, on the file of the Motor Accidents Claims Tribunal, I Additional District and Sessions Court, Cuddalore. On such deposit, the respondents 1, 5 & 6 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 to 4 are directed to be deposited in any one of the Nationalized Banks, till the minor respondents 2 to 4 attain majority. On such deposit, the 1st respondent, being the 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 the connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar (CJ Conf.)

//True Copy//

Sub Assistant Registrar

krk



To

1. The I Additional District and Sessions Judge,
Motor Accident Claims Tribunal,
Cuddalore.

2. The Section Officer,
V.R. Section,
High Court, Madras - 104.

+1cc to Mr.K.J.Sivakumar, Advocate, S.R.No.16659

C.M.A.NO.902 OF 2021

CA (CO)
PBS/27/10/2021