



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.03.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.971 of 2021
and C.M.P.No.5414 of 2021

The Managing Director,
Tamil Nadu State Transport Corporation (Villupuram) Limited,
Division - II, Rangapuram,
Sathuvachari, Vellore. .. Appellant

Vs.

Shamshath .. Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 29.10.2020 made in M.C.O.P.No.316 of 2017, on the file of the I Additional District and Sessions Court, (Motor Accidents Claims Tribunal), Vellore.

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 29.10.2020 made in M.C.O.P.No.316 of 2017, on the file of the I Additional District and Sessions Court, (Motor Accidents Claims Tribunal), Vellore.

2.The appellant is the respondent in M.C.O.P.No.316 of 2017, on the file of the I Additional District and Sessions Court, (Motor Accidents Claims Tribunal), Vellore. The respondent/claimant filed the said claim petition, claiming a sum of Rs.37,00,000/- as compensation for the death of one Kadhar Basha who died in the accident that took place on 13.09.2016.



3. According to the respondent, on the date of accident, when the deceased Kadhar Basha was traveling as a pillion rider in a Motorcycle bearing Registration No. TN-04-AP-9245, driven by his friend Ashrath Ahmed from Vellore to Konavattam, in a careful manner, near Anjaneyar Temple, the driver of Bus bearing Registration No. TN-23-N-1855 owned by the appellant-Transport Corporation drove the same in a rash and negligent manner and dashed on the Motorcycle in which the deceased traveled as pillion and caused the accident. In the accident, the said Kadhar Basha sustained fatal injuries. The accident occurred only due to rash and negligent driving by driver of the Bus. Hence, the respondent filed the claim petition claiming compensation for the death of Kadhar Basha 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 respondent in the claim petition, including the manner of accident. According to the appellant, on the date of accident, when the driver of the Bus owned by them drove the same from Gudiyatham Bus Stand towards Vellore at normal speed, in a cautious manner, the rider of the Motorcycle in which the deceased Kadhar Basha traveled as pillion rider drove the same from opposite direction by overtaking a Tata Ace vehicle rashly and negligently. On seeing the same, the driver of the Bus stopped the vehicle on the left side of the road and sounded horn. The rider of the Motorcycle, in spite of the same, dashed on the Bus and invited the accident. The accident occurred only due to rash and negligent riding of Motorcycle in which the deceased Kadhar Basha traveled as pillion rider. Hence, the appellant is not liable to pay any compensation to the respondent. In any event, the claim petition is bad for non-joinder of owner and insurer of the Motorcycle. The respondent has to prove the age, avocation and income of the deceased to claim compensation. The total compensation claimed by the respondent is excessive and prayed for dismissal of the claim petition.

5. Before the Tribunal, the respondent examined herself as P.W.1, examined one Elango as P.W.2 and marked 8 documents as Exs. P1 to P8. The appellant examined the driver of the Bus involved in the accident 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 only due to rash and negligent driving by driver of the Bus belonging to the appellant-Transport Corporation and directed the appellant to pay a sum of Rs.14,30,800/- as compensation to the respondent.



7.To set aside the award of the Tribunal dated 29.10.2020 made in M.C.O.P.No.316 of 2017, 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 of Motorcycle in which the deceased Kadhar Basha traveled as pillion rider. The Tribunal ought not to have relied upon the evidence of P.W.1 - mother of the deceased, who is not an eye witness to the accident. 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. 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 rash and negligent riding of Motorcycle in which the deceased Kadhar Basha traveled as pillion rider. In the absence of any documents by the respondent to prove the age, avocation and income of the deceased Kadhar Basha, the monthly income of Rs.9,000/- fixed by the Tribunal and Rs.50,000/- granted towards loss of love and affection 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 respondent that while her son was traveling as a pillion rider in the Motorcycle, at Konavattam near Anjaneyar Temple, the driver of the Bus owned by the appellant-Transport Corporation drove the same from opposite direction in a rash and negligent manner and dashed on the Motorcycle and caused the accident. To prove her case, the respondent examined herself as P.W.1, examined eye-witness to the accident as P.W.2 and marked Ex.P1 - FIR registered against the driver of the Bus. On the other hand, it is the contention of the appellant/Transport Corporation that while the Bus belonging to them was driven carefully, the rider of the Motorcycle drove the vehicle in a rash and negligent manner and dashed against the Bus and thus, the accident occurred. To prove their case, the appellant examined the driver of the Bus as R.W.1. Though R.W.1 has reiterated the averments in the counter statement, in the cross-examination, he has admitted that criminal case was registered against him and departmental



inquiry was also initiated. The appellant has not examined any independent witness to prove their case. R.W.1, the driver of the Bus is an interested witness. 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 Tribunal considering the evidence of P.W.2, eye-witness to the accident, Ex.P1 - FIR and failure on the part of the appellant to examine any independent eye-witness contra to evidence of P.W.2, held that the accident has occurred only due to rash and negligent driving by the driver of the Bus belonging to the appellant/Transport Corporation and directed the appellant to pay the compensation to the respondent. There is no error in the said finding of the Tribunal warranting interference by this Court.

11.As far as the quantum of compensation is concerned, it is the case of the respondent that at the time of accident, the deceased Kadhar Basha was working as an Electrician and was earning a sum of Rs.15,000/- per month. She has marked the certificate of Trade Training issued by the Muslim Educational Association of Southern India to the deceased for having undergone three months training programme in House Wiring and Home Appliances Repairing Trade as Ex.P6. The Tribunal considering the age, educational status and avocation of the deceased and in the absence of any evidence with regard to income, fixed a sum of Rs.9,000/- per month as notional income of the deceased. The accident is of the year 2016. Considering the year of accident and the cost of living, the monthly income fixed by the Tribunal is not excessive. The Tribunal has awarded an excessive sum of Rs.50,000/- towards loss of love and affection to the respondent who is the mother of the deceased Kadhar Basha. In view of the fact that the Tribunal has not awarded any amount towards loss of estate, the amount awarded towards loss of love and affection is not interfered with. This Court is of the considered view that the amounts awarded by the Tribunal under other heads are just and reasonable and hence, there is no reason to interfere with the award of the Tribunal.

12.In the result, this Civil Miscellaneous Appeal is dismissed and the amount awarded by the Tribunal at Rs.14,30,800/- 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.316 of 2017. On such deposit, the respondent is permitted to withdraw the award amount, along with interest and costs, after adjusting the amount, if any, already withdrawn, by



filing necessary applications before the Tribunal. Consequently, connected Miscellaneous Petition is closed. No costs.

WEB COPY

Sd/-
Assistant Registrar
//True Copy//

Sub Assistant Registrar

gsa

To

1. The I Additional District and Sessions Judge,
(Motor Accident Claims Tribunal),
Vellore.
2. The Section Officer,
VR Section,
High Court, Madras.

+1CC to Mr.K.J.Sivakumar, Advocate, Sr.No.17894

C.M.A.No.971 of 2021
and
C.M.P.No.5414 of 2021

VSN II (CO)
K.RK. (29.10.2021)