



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.03.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1220 of 2021

and

CMP.No.6181 of 2021

Managing Director,
Tamil Nadu State Transport Corporation Limited,
Salamedu, Vazhudareddy,
Villupuram.

..Appellant/Respondent

Vs.

1.Valarmathi
2.Vimala
3.Nirmala
4.Sangeetha

..Respondents/Claimants

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 09.09.2020 made in M.C.O.P.No.123 of 2018, on the file of the Motor Accidents Claims Tribunal, Special District Court, 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 09.09.2020 made in M.C.O.P.No.123 of 2018, on the file of the Motor Accidents Claims Tribunal, Special District Court, Villupuram.

3.The appellant is the respondent in M.C.O.P.No.123 of 2018, on the file of the Motor Accidents Claims Tribunal, Special District Court, Villupuram. The respondents filed the above said claim petition claiming a sum of Rs.25,00,000/- as compensation for the death of one Kaliyamoorthy, who died in the accident that took place on 18.12.2017.

4.According to respondents, on 18.12.2017 at about 11.45 A.M., while the deceased Kaliyamoorthy was riding the motorcycle bearing Registration No.TN 32 AF 5551 on the extreme left side of the Villupuram - Thiruvannamalai Road near Kedar Bus Stop,



the driver of the bus bearing Registration No.TN 32 N 3759 belonging to appellant, who was driving the bus from the opposite direction in a rash and negligent manner, dashed against the motorcycle driven by the said Kaliyamoorthy and caused the accident. In the accident, the said Kaliyamoorthy sustained multiple grievous injuries and immediately he was taken to Government Medical College Hospital, Mundiampakkam, Villupuram. In spite of treatment, the said Kaliyamoorthy succumbed to injuries on 12.08.2018. Therefore, the respondents, filed the said claim petition claiming a sum of Rs.25,00,000/- as compensation for the death of said Kaliyamoorthy against the appellant-Transport Corporation.

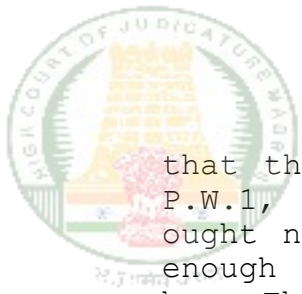
5.The appellant-Transport Corporation filed counter statement and denied all the averments made by the respondents. The appellant-Transport Corporation denied the manner of accident as alleged by the respondents. According to the appellant, on 18.12.2017 at 11.50 A.M., while the driver of the bus was about to stop the bus at Kedar Bus Stop on the Anandhapuram to Villupuram road, the passerby suddenly tried to cross the road, had contact near the front foot board of the bus, fell down on the road and due to the same, his left leg got stuck in the backside wheel of the bus and invited the accident. Therefore, the accident has occurred only due to the negligence on the part of the deceased and there is no negligence on the part of the driver of the bus. Hence, the appellant-Transport Corporation is not liable to pay any compensation to the respondents. 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, one Manokar, eyewitness to the accident was examined as P.W.2 and 7 documents were marked as Exs.P1 to P7. The appellant-Transport Corporation examined the driver of the bus as R.W.1 and no document was marked.

7.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident has occurred only due to rash and negligent driving by the driver of the bus belonging to appellant-Transport Corporation and directed the appellant-Transport Corporation to pay a sum of Rs.8,13,700/- as compensation to the respondents.

8.To set aside the award dated 09.09.2020 made in M.C.O.P.No.123 of 2018, 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 ought not to have held that mere registering of F.I.R. is more enough for fixing negligence on the part of the driver of the bus. The Tribunal erroneously fixed negligence on the driver of the bus merely relying on the F.I.R. 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 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 Kaliyamoorthy was riding the motorcycle bearing Registration No. TN 32 AF 5551 on the extreme left side of the Villupuram - Thiruvannamalai Road near Kedar Bus Stop, the driver of the bus bearing Registration No. TN 32 N 3759 belonging to appellant, who was driving the bus from the opposite direction in a rash and negligent manner, dashed against the motorcycle driven by the said Kaliyamoorthy and caused the accident. To prove the said contention, the 1st respondent examined herself as P.W.1 and examined one Manokar, eyewitness to the accident 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 about to stop the bus at Kedar Bus Stop on the Anandhapuram to Villupuram road, the passerby suddenly tried to cross the road, had contact near the front foot board of the bus, fell down on the road and due to the same, his left leg got stuck in the backside wheel of the bus and invited the accident. To prove the said contention, the appellant examined the 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 corroborate the evidence of R.W.1. Further, the appellant or the driver of the bus have not filed any objection to the F.I.R., which was registered against the driver of the bus. The Tribunal considering the evidence of P.W.1, P.W.2, R.W.1, Ex.P1/F.I.R., which was registered against the driver of the bus and failure on the part of the appellant for not filing any objection to the F.I.R. and not examining any other independent witness except R.W.1, 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 54 years, a Sugarcane Cutting Mason and Agriculturist and was earning a sum of Rs.16,000/- per month. Except oral evidence, the respondents have not produced any document to prove the avocation and income of the deceased. In the absence of any document to prove the avocation and income of the deceased, the Tribunal considering the year of accident, age and nature of work done by 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 56 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 '9' and granted 10% enhancement towards future prospects. There are four dependants of the deceased and the Tribunal has rightly deducted 1/4th towards personal expenses of the deceased and awarded a sum of Rs.6,23,700/- towards loss of dependency. The Tribunal considering entire materials on record, has awarded a sum of Rs.8,13,700/- 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.8,13,700/- 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.123 of 2018, on the file of the Motor Accidents Claims Tribunal, Special District Court, Villupuram. On such deposit, the respondents 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/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

krk



To

1. The Special District Judge,
Motor Accident Claims Tribunal,
Villupuram.

WEB COPY

+1cc to Mr.K.J.Sivakumar, Appellant Advocate, S.R.No.20010

C.M.A.No.1220 of 2021

NR(CO)
RGA(28/10/2021)