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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.914 of 2021

and

C.M.P.No.5230 of 2021

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

.. Appellant

Vs.

1.S.Amudha

2.S.Raja

3.Minor. S.Deepa

4.Minor. S.Jothika

(Minor respondents 3 & 4 are represented
by their natural guardian, next friend and
mother S.Amudha, 1st respondent herein)

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 21.02.2020 made in M.C.O.P.No.1219 of 2015 on the file of the Motor Accidents Claims Tribunal, Principal District 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 21.02.2020 made in M.C.O.P.No.1219 of 2015 on the file of the Motor Accidents Claims Tribunal, Principal District Court, Cuddalore.

3.The appellant is the respondent in M.C.O.P.No.1219 of 2015 on the file of the Motor Accidents Claims Tribunal, Principal District Court, Cuddalore. The respondents filed the above said claim petition claiming a sum of Rs.50,00,000/- as compensation for the death of one K.Sakthivel, who died in the accident that took place on 03.02.2015.



4. According to respondents, on 03.02.2015 at about 12.45 P.M., while the deceased K.Sakthivel was riding the motorcycle bearing Registration No.TN 31 BW 9835 from East to West on the extreme left side of the Vridhachalam - Cuddalore road near Veppangkurichi bus stop, the driver of the bus bearing Registration No.TN 32 N 3956 belonging to appellant, drove the bus in a rash and negligent manner at a high speed and dashed behind the motorcycle driven by the said K.Sakthivel and caused the accident. In the accident, the said K.Sakthivel was thrown out of the motorcycle and sustained multiple grievous injuries all over his body. Immediately after the accident, the said K.Sakthivel was taken to Government Hospital, Vridhachalam and then transferred to JIPMER Hospital, Puducherry. In spite of treatment, the said K.Sakthivel succumbed to injuries on 09.02.2015. Therefore, the respondents, filed the said claim petition claiming a sum of Rs.50,00,000/- as compensation for the death of said K.Sakthivel 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 03.02.2015 at about 12.40 P.M., while the driver of the bus was driving the bus from Vadalur Bus Stand to Trichy near Oomangalam bus stop, the persons who came in two motorcycles stopped the bus and asked the driver of the bus to drive the bus to Police Station as the bus has caused accident near Veppangkurichi Amman Temple by dashing the persons who were traveling in the motorcycle. Therefore, the driver of the bus drove the bus to Oomangalam Police Station. But the Police officials said that they have not received any complaint regarding the alleged accident and asked the driver of the bus to drive the same in the said route. But the Police have received a complaint on 10.03.2015 that an accident has occurred near Oomangalam after one month of the accident. It is impossible to take the bus at 12.40 P.M. at Vadalur and reach Oomangalam at 12.45 P.M. Further, the persons who traveled in the bus on the alleged date of accident, viz., S.Senthilmurugan & M.Aravindhraj have written a letter that on 03.02.2015, there was no accident as alleged by the respondents. Therefore, the said claim petition was filed only with an intention to grab money from the appellant. The appellant-Transport Corporation is not liable to pay any compensation to the respondents for the alleged accident. The appellant-Transport Corporation denied the age, avocation and income of the deceased and also the fact that the respondents are the legal heirs 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 5 documents were marked as Exs.P1 to P5. The appellant-Transport Corporation did not let in any oral and documentary evidence.

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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.10,85,000/- as compensation to the respondents.

8. To set aside the award dated 21.02.2020 made in M.C.O.P.No.1219 of 2015, 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 accepted 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.6,000/- per month fixed by the Tribunal as notional income of the deceased is excessive. The Tribunal ought not to have fixed the interest at the rate of 8% per annum, which is on the higher side. The total compensation awarded by the Tribunal at Rs.10,85,000/- is excessive and prayed for setting aside the award passed by the Tribunal.

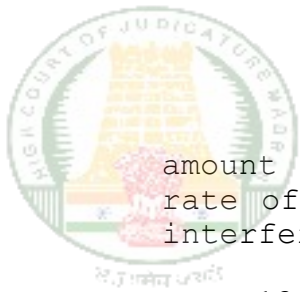
10. Heard the learned counsel appearing for the appellant-Transport Corporation and perused the entire materials on record.

11. It is the case of the respondents that at the time of accident, while the deceased K.Sakthivel was riding the motorcycle bearing Registration No.TN 31 BW 9835 from East to West on the extreme left side of the Vridhachalam - Cuddalore road near Veppangkurichi bus stop, the driver of the bus bearing Registration No.TN 32 N 3956 belonging to appellant, drove the bus in a rash and negligent manner at a high speed and dashed behind the motorcycle driven by the said K.Sakthivel and caused the accident. To prove the said contention, the 1st respondent examined herself as P.W.1 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 bus from Vadalur Bus Stand to Trichy near Oomangalam bus stop, the persons who came in two motorcycles stopped the



bus and asked the driver of the bus to drive the bus to Police Station as the bus has caused accident near Veppangkurichi Amman Temple by dashing the persons who were traveling in the motorcycle. Therefore, the driver of the bus drove the bus to Oomangalam Police Station. But the Police officials said that they have not received any complaint regarding the alleged accident and asked the driver of the bus to drive the same in the said route. Thereafter, the Police have received a complaint only on 10.03.2015 that an accident has occurred near Oomangalam i.e., one month from the date of accident. It is impossible to take the bus at 12.40 P.M. at Vadalur and reach Oomangalam at 12.45 P.M. To prove the said contention, the appellant has not examined the Driver of the bus or any other independent witness. But, two persons who traveled in the bus on the alleged date of accident, viz., S.Senthilmurugan & M.Aravindhraj have written a letter mentioning that on 03.02.2015, there was no accident as alleged by the respondents. The appellant has not examined the said persons who wrote the letter. 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. The Tribunal considering the evidence of P.W.1 & contents of Ex.P1/F.I.R. and failure on the part of the appellant for not filing any objection to the F.I.R., not filing any complaint against the deceased, not examining the driver of the bus or any independent witness or the persons who wrote the letter, 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 a Driver aged 40 years and was earning a sum of Rs.25,000/- per month. They did not file any document to prove the same. In the absence of any material evidence 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.6,000/- per month as notional income of the deceased and the same is meagre. As per Ex.P4/postmortem certificate, the deceased was aged 40 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 '15' and granted 40% enhancement towards future prospects. There are four dependants of the deceased. The Tribunal has rightly deducted 1/4th towards personal expenses of the deceased and awarded a sum of Rs.10,12,500/- towards loss of dependency. In view of the meagre



amount fixed by the Tribunal as notional income of the deceased, rate of interest granted by the Tribunal at 8% per annum is not interfered with.

13. In the result, this Civil Miscellaneous Appeal is dismissed and a sum of Rs.10,85,000/- 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.1219 of 2015 on the file of the Motor Accidents Claims Tribunal, Principal District Court, Cuddalore. On such deposit, the respondents 1 & 2 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 3 & 4 are directed to be deposited in any one of the Nationalized Banks, till the minor respondents 3 & 4 attain majority. On such deposit, the 1st respondent, being the Mother of the minor respondents 3 & 4 is permitted to withdraw the accrued interest once in three months for the welfare of the minor respondents 3 & 4. Consequently the connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar(CS VIII)

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Sub Assistant Registrar

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To

1.The Principal District Judge,
Motor Accidents Claims Tribunal,
Cuddalore.

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

+lcc to M/s.K.Sivakumar, Advocate SR.No. 16661

C.M.A.No.914 of 2021

AK II(CO)
B.VC(23.08.2021)