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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.03.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1178 of 2021
and C.M.P.No.5997 of 2021

The Manging Director,
Tamil Nadu State Transport Corporation Limited,
3/137, Salamedu, Vazhuthareddy and Post,
Villupuram Taluk. .. Appellant/Respondent

Vs.

1.Krishnamoorthy
2.Valarmathi
3.Pachaiyammal .. Respondents/Petitioners

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the order and decree dated 03.11.2018 made in M.C.O.P. No.26 of 2015, on the file of the II Additional District Judge, (Motor Accidents Claims Tribunal), Villupuram @ Tindivanam.

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 03.11.2018 made in M.C.O.P. No.26 of 2015, on the file of the II Additional District Court, (Motor Accidents Claims Tribunal), Villupuram @ Tindivanam.

2.The appellant is the respondent in M.C.O.P.No.26 of 2015, on the file of the II Additional District Court, (Motor Accidents Claims Tribunal), Villupuram @ Tindivanam. The respondents/claimants filed the said claim petition, claiming a sum of Rs.30,00,000/- as compensation for the death of one Yuvaraj, who died in the accident that took place on 10.10.2015.

3.According to the respondents, on the date of accident, when the deceased Yuvaraj was riding his Motorcycle bearing Registration No.TN-11-K-7760 on the left side of the Pudukkottai to Chennai East Coast Road, near Seekanakuppam, the driver of the



Bus bearing Registration No.TN-32-N-3864 owned by the appellant-Transport Corporation drove the same from opposite direction in great speed and dashed on the Motorcycle and caused the accident. In the accident, the said Yuvaraj sustained fatal injuries and died on the spot. The accident occurred only due to rash and negligent driving by driver of the Bus. Hence, the respondents filed the claim petition claiming compensation for the death of Yuvaraj 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 respondents in the claim petition, including the manner of accident. According to the appellant, on the date of accident, when the Bus owned by the appellant-Transport Corporation was driven by its driver carefully from Chennai to Chidambaram, near Seekanakuppam, the deceased Yuvaraj along with a pillion rider, drove the Motorcycle in a rash and negligent manner, without wearing helmet and dashed on the right side of the Bus and invited the accident. The accident occurred only due to the negligent riding of Motorcycle by the deceased Yuvaraj. Hence, the appellant is not liable to pay any compensation to the respondents. The claim petition is bad for non-joinder of owner and insurer of the Motorcycle. In any event, the respondents have to prove the age, avocation and income of the deceased to claim compensation and prayed for dismissal of the claim petition.

5.Before the Tribunal, the 1st respondent examined himself as P.W.1, examined one Gurunathan and Ranganathan, eye-witnesses as P.W.2 and P.W.3 and marked 8 documents as Exs.P1 to P8. The appellant examined one Pandiyan, driver of the Bus 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 due to rash and negligent driving by driver of the Bus and directed the appellant-Transport corporation to pay a sum of Rs.13,20,000/- as compensation to the respondents.

7.To set aside the award of the Tribunal dated 03.11.2018 made in M.C.O.P. No.26 of 2015, 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 the rash and negligent driving of Motorcycle by the deceased Yuvaraj. The Tribunal ought not to have relied upon the evidence of P.W.1 - father of the deceased, who is not an eye witness. 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. In the absence of any documents by the respondents to prove the age, avocation and income of the deceased Yuvaraj, a sum of Rs.7,500/- per month fixed as notional income of the deceased and Rs.75,000/- 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 respondents that on the date of accident, while the deceased Yuvaraj was riding the Motorcycle on the left side of the Pudukkottai to Chennai, near Seekanakuppam, the driver of the Bus owned by the appellant-Transport Corporation drove the same from opposite direction in great speed and dashed on the Motorcycle and caused the accident. To substantiate this contention, the 1st respondent, father of the deceased Yuvaraj examined himself as P.W.1, examined two eye-witnesses to the accident as P.W.2, P.W.3 and marked FIR which was registered against the driver of the Bus as Ex.P1. On the other hand, it is the contention of the appellant/Transport Corporation that when the Bus owned by the appellant/Transport Corporation was driven by its driver carefully from Chennai to Chidambaram, near Seekankulam, the deceased Yuvaraj along with a pillion rider, drove the Motorcycle in a rash and negligent manner, without wearing helmet and dashed on the right side of the Bus and invited the accident. The appellant examined the driver of the Bus as R.W.1 to prove the same. But, they have not examined any independent witness to prove their case. The Tribunal considering the evidence of P.W.1 to P.W.3 and FIR which was registered against the driver of the Bus, failure on the part of the appellant to examine the Conductor of the Bus or any independent eye-witness, in the absence of any objection given to the complaint lodged against the driver of the Bus, held that the accident occurred due to rash and negligent driving by driver of the bus owned by appellant and directed the appellant to pay the compensation to the respondents. There is no error in the said finding of the Tribunal warranting interference by this Court.

11. It is the case of the respondents that the deceased Yuvaraj was aged 22 years, working as a Generator Sales & Service staff at Shakthi Power System, Tambaram and was earning a sum of Rs.20,000/- per month at the time of accident. The



respondents filed Ex.P8 - salary certificate of the deceased Yuvaraj. The Tribunal considering the same fixed a sum of Rs.7,500/- per month as notional income of the deceased and granted 50% enhancement towards future prospects. The accident is of the year 2015. The cost of living has increased enormously and salary of even unskilled workers has increased substantially. Considering the year of accident and nature of work done by the deceased, the monthly income fixed by the Tribunal is not excessive. The Tribunal considering the fact that the deceased was a Bachelor aged 22 years at the time of accident, rightly applied the multiplier '18' and after deducting 50% towards personal expenses of the deceased, awarded compensation towards pecuniary loss. The Tribunal awarded a sum of Rs.25,000/- each towards loss of love and affection to the respondents who are the parents and sister of the deceased Yuvaraj. The amounts awarded by the Tribunal under conventional heads are also not excessive, warranting interference by this Court.

12.In the result, this Civil Miscellaneous Appeal is dismissed and the amount awarded by the Tribunal at Rs.13,20,000/- 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.26 of 2015. On such deposit, the respondents are permitted to withdraw their 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, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

gsa

To

1.The II Additional District Judge,
(Motor Accident Claims Tribunal),
Villupuram @ Tindivanam.



Copy To

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

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+1cc to Mr.K.J.Sivakumar, Advocate, S.R.No. 20017

C.M.A.No.1178 of 2021
and
C.M.P.No.5997 of 2021

AJS (CO)
GN(15/09/2021)