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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.03.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1174 of 2021
and C.M.P.No.5976 of 2021

The Managing Director,
Tamil Nadu State Transport Corporation Limited,
Vazhuthareddy, Villupuram. .. Appellant/Respondent

Vs.

1.Kamalam
2.Malathi
3.Sivakozhunthu
4.Rajalakshmi
5.Latha .. Respondents/Claimants

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 18.02.2019 made in M.C.O.P. No.259 of 2017, on the file of the III Additional District Judge, (Motor Accidents Claims Tribunal), Cuddalore at Vriddhachalam.

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 18.02.2019 made in M.C.O.P.No.259 of 2017, on the file of the III Additional District Court, (Motor Accidents Claims Tribunal), Cuddalore at Vriddhachalam.

2.The appellant is the respondent in M.C.O.P.No.259 of 2017, on the file of the III Additional District Court, (Motor Accidents Claims Tribunal), Cuddalore at Vriddhachalam. The respondents/claimants filed the said claim petition, claiming a sum of Rs.15,00,000/- as compensation for the death of one Ganapathy, who died in the accident that took place on 08.04.2017.

3.According to the respondents, on the date of accident, when the deceased Ganapathy was walking towards South in main



road, Chitthalur, Vridhachalam, near Abirami Chembai in Chithalur, the driver of the Bus bearing Registration No.TN-32-N-3242 owned by the appellant-Transport Corporation drove the same in a rash and negligent manner at high speed and dashed on the deceased Ganapathy and caused the accident. In the accident, the said Ganapathy sustained fatal injuries. 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 Ganapathy 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 towards Vridhachalam, carefully with due care and caution by observing all traffic rules, near Chithalur, the deceased Ganapathy negligently crossed from left to right side of the road and dashed on the front left side of the Bus and invited the accident. The accident occurred only due to the negligence of the deceased Ganapathy and hence, the appellant is not liable to pay any compensation to the respondents. The respondents have to prove the age, avocation and income of the deceased to claim compensation. The total compensation claimed by the respondents is excessive and prayed for dismissal of the claim petition.

5.Before the Tribunal, the 1st respondent examined herself as P.W.1, examined one Kasinathan, eye-witness as P.W.2 and marked 4 documents as Exs.P1 to P4. The appellant examined one Poomalai, 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 owned by the appellant-Transport Corporation and directed the appellant to pay a sum of Rs.8,47,800/- as compensation to the respondents.

7.To set aside the award of the Tribunal dated 18.02.2019 made in M.C.O.P.No.259 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 negligence of the deceased Ganapathy. The Tribunal ought not to have relied upon the evidence of P.W.1 - sister 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. 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 negligence on the part of the deceased Ganapathy. In the absence of any documents by the respondents to prove the age, avocation and income of the deceased Ganapathy, the monthly income of Rs.8,000/- fixed by the Tribunal and a sum of Rs.1,00,000/- granted towards loss of love and affection are excessive. The deceased was a Bachelor at the time of accident. The Tribunal erred in deducting 1/4th towards personal expenses of the deceased while awarding compensation towards loss of dependency, instead of deducting 50%. 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 while the deceased Ganapathy was walking towards South in main road, Chitthalur, Vridhachalam, near Abirami Chembai in Chithalur, the driver of the Bus owned by the appellant-Transport Corporation drove the same in a rash and negligent manner at high speed and dashed on the deceased Ganapathy and caused the accident. To substantiate this contention, the 1st respondent, sister of the deceased Ganapathy examined herself as P.W.1, examined Kasinathan, eye-witness to the accident as P.W.2 and marked FIR 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 towards Kumbakonam, carefully with due care and caution by observing all traffic rules, near Chithalur, the deceased Ganapathy negligently crossed the road from left side to right side without seeing the on coming Bus and dashed on the Bus, fell down and invited the accident. To prove their case, the appellant examined the driver of the Bus as R.W.1. The appellant has not examined any independent witness to prove their case. R.W.1, the driver of the Bus is an interested witness. The Tribunal considering the evidence of P.W.2, eye-witness and FIR which was registered against the driver of the Bus, failure on the part of the appellant to examine any independent eye-witness and in the absence of any objection given to the complaint lodged against the driver of the Bus, held that the accident has occurred only due to rash and negligent driving by driver of the Bus owned by the appellant/Transport Corporation 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 was working as a Coolie and was earning a sum of Rs.15,000/- per month at the time of accident. They did not file any document to prove the same. In the absence of any evidence to prove the avocation and income, the Tribunal fixed a sum of Rs.8,000/- per month as notional income of the deceased and granted 10% enhancement towards future prospects. The accident is of the year 2017. 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 meagre. The Tribunal considering the fact that the deceased was aged 59 years at the time of accident, rightly applied the multiplier '9'. The deceased was a bachelor at the time of accident. The Tribunal erroneously deducted 1/4th towards personal expenses of the deceased and awarded compensation towards loss of dependency. In view of meagre amounts fixed as monthly income of the deceased who died in the accident that occurred in the year 2017, the deduction of 1/4th towards personal expenses instead of 50% is not interfered with. The Tribunal awarded a sum of Rs.20,000/- each towards loss of love and affection to the respondents. The same is not excessive. 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.8,47,800/- 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.259 of 2017. 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

//True Copy//

Sub Assistant Registrar



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To

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1.The III Additional District Judge,
(Motor Accident Claims Tribunal),
Cuddalore at Vriddhachalam.

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

+1cc to Mr.K.J.Sivakumar, Advocate, S.R.No.19476

C.M.A.No.1174 of 2021
and
C.M.P.No.5976 of 2021

PMK (CO)
CB(21/10/2021)