



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.972 of 2021
and C.M.P.No.5433 of 2021

The Managing Director,
Tamil Nadu State Transport Corporation Limited,
(Villupuram),
Cuddalore Division. .. Appellant/ Respondents

Vs.

1.Vennila

2.Minor.V.Sushmidha

3.Minor.V.Harish
(for Minor respondents are rep.
By mother 1st respondent, Vennila)

4.M.Jayaraman

5.Rajalakshmi .. Respondents/ Petitioners

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the order award dated 30.07.2020 made in M.C.O.P.No.45 of 2019, on the file of the Special Sub Court, (Motor Accidents Claims Tribunal), Cuddalore.

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 30.07.2020 made in M.C.O.P.No.45 of 2019, on the file of the Special Sub Court, (Motor Accidents Claims Tribunal), Cuddalore.

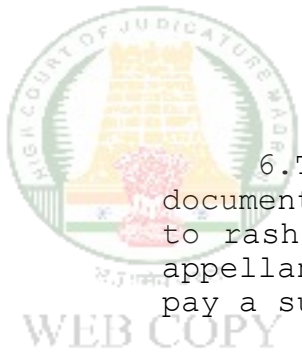


2.The appellant is the respondent in M.C.O.P. No.45 of 2019, on the file of the Special Sub Court, (Motor Accidents Claims Tribunal), Cuddalore. The respondents/claimants filed the said claim petition, claiming a sum of Rs.25,00,000/- as compensation for the death of one J.Velmurugan, who died in the accident that took place on 29.07.2018.

3.According to the respondents, on the date of accident, when the deceased J.Velmurugan was traveling as a pillion rider in a Motorcycle bearing Registration No.PY-02-B-2624, from South to North, the rider of the Motorcycle drove the vehicle at a moderate speed, keeping extreme left and after ensuring 'no traffic', showed hand signal and turned to right side. At that time, the driver of the Bus bearing Registration No.TN-32-N-3348 owned by the appellant-Transport Corporation drove the same from behind at a great speed in a rash and negligent manner, without making horn, hit against the Motorcycle in which the deceased J.Velmurugan was traveling as a pillion rider and caused the accident. In the accident, the said J.Velmurugan sustained severe 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 J.Velmurugan 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 said Bus was driven by its driver towards Vridhachalam, near Meikavalpudhur next to Veerachozhapuram, the rider of the Motorcycle in which the deceased J.Velmurugan traveled as pillion rider, overtook the said Bus and turned suddenly from left to right side of the road without giving any signal, hit on the front right side of the Bus and invited the accident. The accident occurred only due to rash and negligent driving by rider of the Motorcycle in which the deceased J.Velmurugan traveled as pillion rider. The claim petition is bad for non-joinder of owner and insurer of the Motorcycle. 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 herself as P.W.1, examined one Raji, eye-witness as P.W.2 and 6 documents were marked as Exs.P1 to P6. 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 owned by the appellant-Transport Corporation and directed the appellant to pay a sum of Rs.33,15,000/- as compensation to the respondents.

7.To set aside the award of the Tribunal dated 30.07.2020 made in M.C.O.P.No.45 of 2019, 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 negligent act of the rider of the Motorcycle in which the deceased J.Velmurugan traveled as pillion rider. The Tribunal ought not to have relied upon the evidence of P.W.1 - wife 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 rash and negligent riding by rider of the Motorcycle. In the absence of any documents by the respondents to prove the age, avocation and income of the deceased J.Velmurugan, the monthly income of Rs.15,000/- fixed by the Tribunal is 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.

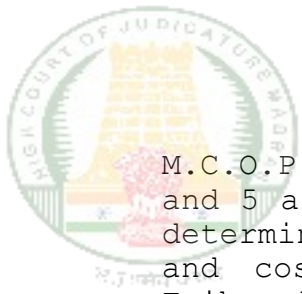
10.It is the case of the respondents that while the deceased J.Velmurugan was traveling as a pillion rider in Motorcycle driven by its rider at moderate speed, keeping extreme left and turning to right side after ensuring 'no traffic' and showing hand signal, the driver of the Bus owned by the appellant-Transport Corporation drove the same from behind at a great speed in a rash and negligent manner, without honking, hit against the Motorcycle and caused the accident. To substantiate this contention, the 1st respondent, wife of the deceased J.Velmurugan examined herself as P.W.1, examined one Raji, eye-witness to the accident as P.W.2 and marked the FIR registered



against the driver of the Bus as Ex.P1. On the other hand, it is the contention of the appellant/Transport Corporation that while the Bus owned by them was driven carefully, the rider of the Motorcycle in which the deceased J.Velmurugan was traveling as a pillion rider drove the vehicle in a rash and negligent manner, over took the Bus and suddenly turned to right side of the road without giving any signal and hit on the front right side of the Bus 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.As far as quantum of compensation is concerned, it is the case of the respondents that the deceased was a Owner-cum-Driver of a Tourist Taxi and was earning a sum of Rs.20,000/- per month at the time of accident. The respondents did not file any document to prove the same. In the absence of any material evidence to prove the income of the deceased, the Tribunal considering the cost of living and that there are six persons in the family including the deceased, fixed a sum of Rs.15,000/- per month as notional income of the deceased and granted 40% enhancement towards future prospects. The accident is of the year 2018. 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 age of the deceased as 30 years, rightly applied the multiplier '17' and after deducting 1/4th towards personal expenses of the deceased, awarded compensation towards loss of income. The amounts awarded by the Tribunal under different heads are 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.33,15,000/- 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.45 of 2019. On such deposit, the respondents 1, 4 and 5 are permitted to withdraw their share of the award amount, determined by the Tribunal, along with proportionate interest and costs, as per the ratio of apportionment fixed by the Tribunal, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal. The shares of the minor respondents 2 and 3 are directed to be deposited in any one of the Nationalized Bank, till the minors attain majority. The 1st respondent, mother of the minor respondents 2 and 3 is permitted to withdraw the accrued interest, once in three months for the welfare of the minor respondents 2 and 3. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(co)

//True Copy//

Sub Assistant Registrar

gsa
To

1.The Special Subordinate Judge,
(Motor Accident Claims Tribunal),
Cuddalore.

Copy to:
The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mr.K.J.Sivakumar, Advocate SR.No. 17895

C.M.A.No.972 of 2021
and
C.M.P.No.5433 of 2021

AJS (CO)
A.SK(24.09.2021)