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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2021

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

C.M.A. No.2085 of 2010

Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Coimbatore Division I,
37, Mettupalayam Road,
Coimbatore.

.. Appellant/2nd Respondent

Vs.

1.Kulandaiammal
2.Minor. Manimekalai
3.Nagaraj
4.M.Maideen Pitchai
5.M.Mohideen

.. Respondents 1 & 2/Petitioners
.. 3rd Respondent/1st Respondent

6.National Insurance Company Ltd.,
1st Floor, 135-1, Rose Building, Main Road,
Kovilpatti, Tuticorin - 628 501.

.. Respondents 4 to 5/Respondents 3 to 5

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 26.11.2009, made in M.C.O.P. No.117 of 2008, on the file of the Sub Court, Motor Accident Claims Tribunal, Dharapuram.

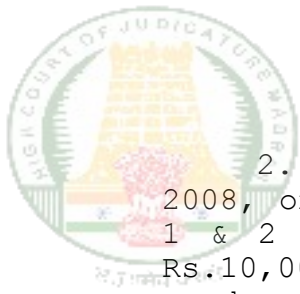
For Appellant : M/s.S.Swaminathan

For Respondents : Mr.S.Kaithamlai Kumaran -R1&R2
Mr.J.Chandran - R6
RR 4 & 5 - Given Up
R3 - Notice Unserved

J U D G M E N T

The matter is heard through "Video Conferencing".

This Civil Miscellaneous Appeal has been filed by the appellant-Transport Corporation Company against the judgment and decree dated 26.11.2009, made in M.C.O.P. No.117 of 2008, on the file of the Sub Court, Dharapuram.



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2. The appellant is the 2nd respondent in M.C.O.P. No.117 of 2008, on the file of the Sub Court, Dharapuram. The respondents 1 & 2 have filed the said claim petition, claiming a sum of Rs.10,00,000/- as compensation for the death occurred in the road accident that took place on 29.10.2006.

3. According to the respondents 1 & 2/claimants, on 29.10.2006, the deceased was traveling as a passenger in the TNSTC bus bearing Reg.No. TN38 N 1165 from Dharapuram to Ootanchatram. At about 4.00 a.m while the said bus was proceeding near Koneripatti junction, from west to east direction, the driver of the bus drove the bus in a rash and negligent manner and dashed the bus on a lorry bearing registration number TMR 1440 which was coming from the opposite direction. As a result both the vehicles were badly damaged and many passengers including the deceased Ramesh sustained injuries. The deceased was taken to the hospital and treated as inpatient from 29.10.2006 to 26.11.2006 and he succumbed to the injuries on 26.11.2006. Being the legal heirs of the deceased Ramesh, the claimants/respondents 1 & 2 herein have filed a claim petition before the tribunal, claiming compensation for a sum of Rs.10,00,000/- .

4. The appellant-Transport Corporation Company, filed counter statement before the tribunal and denied the mode of the accident as narrated by the claimant and further denied the age, income and avocation of the deceased and the total compensation claimed by the claimants are excessive.

5. Before the Tribunal, the 1st respondent examined herself as P.W.1 and examined PW2 and marked documents ExP1 to P14. The appellant has not examined any witnesses and no documents were marked.

6. The Tribunal after considering the pleadings, oral and documentary evidence, fixed liability on the driver of the Transport Corporation Bus and awarded compensation of Rs.4,64,000/- under various heads together with interest at 7.5% per annum payable by the Transport Corporation.

7. Challenging the liability fastened on them by the award dated 26.11.2009, made in M.C.O.P. No.117 of 2008, the appellant - Transport Corporation has come out with the present appeal.

8. The learned counsel for the appellant/Transport Corporation Company submitted that on 29.10.2006 at 4.00am, when the appellant transport corporation bus nearing Koneripatti a big tamarind tree fell down on the road, on seeing this the driver of the bus swerved the bus to the right side of the road. At that time, a lorry bearing Reg.No.TMR 1440 which was coming



from the opposite direction failed to dim the head light and drove the same in a rash and negligent manner and dashed against the bus with a great force and thus the accident had occurred. Therefore, the appellant transport corporation is not liable to pay compensation. It is further contended by the learned counsel for the appellant that the tribunal without considering the above aspect, fixed the liability on the part of the driver of appellant transport corporation and awarded excessive compensation to the claimants, hence the award of the tribunal is liable to be set aside.

9. The learned counsel appearing for the appellant-Transport Corporation further contended the tribunal ought not to have held that the driver of the appellant transport corporation bus was responsible for the accident only based on the FIR and pendency of the criminal case. He would further submit that the bus and the lorry dashed against each other and hence the owner, driver and the insurance company of the lorry/ respondents 4 to 6 are equally responsible for the accident and liable to pay compensation awarded by the tribunal. The tribunal wrongly applied multiplier 17 for arriving loss of earning and sum awarded under other heads are also excessive with any proof or documents. Hence prayed to set aside the award passed by the tribunal.

10. On the other hand, the learned counsel appearing for the respondents/claimants strongly denied the submissions made by the learned counsel for the appellant and submitted that the tribunal after considering all the oral and documentary evidence, has come to the conclusion that the driver of the appellant transport Corporation alone responsible for the said accident and awarded the reasonable compensation under various heads, which does not require any interference by this Court.

11. Heard learned counsel appearing for the appellant-Transport Corporation Company as well as the respondents/claimants and perused the materials available on record.

12. From the materials available on record, one Chinnasamy/PW2 was examined as eyewitness, he deposed that only due to rash and negligent driving by the driver of the appellant transport corporation bus bearing Reg.No. TN38-N-1165 the accident had occurred. Further, a criminal case was registered against the driver of the bus for causing the said accident. The version in FIR/Ex.P1 is also against the driver of the bus. As per Ex.P2/Rough Sketch the appellant transport corporation bus was proceeding on the right side of the road and lorry was coming towards Dharapuram i.e. left side of the road, therefore it is clear that the appellant bus came in a wrong side of the



road and hit against the lorry and caused the accident. In view of the above, the main contention raised by the appellant regarding fixing of contributory negligence cannot be accepted and the same is rejected.

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13. Insofar as compensation awarded by the tribunal, undisputedly, the deceased had traveled in the appellant transport corporation bus and met with an accident. He was given treatment in Madurai Rajaji Hospital and declared died on 26.11.2006. As per Ex.P4/Postmortem Certificate, the tribunal fixed the age of the deceased as 31 years and fixed the monthly income as Rs.3000/- against the claim of Rs.7000/- and awarded the loss of income by adopting multiplier method at Rs.4,08,000/-. In addition to that, the sum of Rs.56,000/- under various heads are also proper and reasonable in view of documents marked Ex.P1 to P8. This Court finds no error in determination of compensation by the tribunal and confirms the award.

14. In the result, this Civil Miscellaneous Appeal is dismissed and the amount awarded by the Tribunal at Rs.4,64,000/- 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 Company shall deposit the award amount along with interest and costs, less the amount already deposited, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P. No.117 of 2008. On such deposit, the respondents 1 & 2 are permitted to withdraw their share of the award amount 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. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal,
The Subordinate Judge,
Dharapuram.



2. The Section Officer,
V.R Section,
High Court, Madras.

+1cc to Mr.S.Kaithamlai Kumaran, Advocate, S.R.No.4999

+1cc to Mr.S.S.Swaminathan, Advocate, S.R.No.4881

+1cc to Mr.J.Chandran, Advocate, S.R.No.4703

C.M.A. No.2085 of 2010

PVS (CO)
HS (07/09/2021)