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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

C.M.A.No.1832 of 2021
and CMP.No.9843 of 2021

The Managing Director
Tamil Nadu State Transport
Corporation, Karaikudi.

... Appellant/Respondent

Vs.

Ayyadurai (died)
1. Raja Soundiram
2. Suresh
3. Sivaranjani

... Respondents/Petitioners

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 02.11.2020 made in M.C.O.P.No.456 of 2015 on the file of the Motor Accidents Claims Tribunal, Principal District Judge, Perambalur.

For Appellant : Mr.D.Venkatachalam

J U D G M E N T

The matter is heard through "Video Conferencing".

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 02.11.2020 made in M.C.O.P.No.456 of 2015 on the file of the Motor Accidents Claims Tribunal, Principal District Judge, Perambalur.

2. The appellant is the respondent in M.C.O.P.No.456 of 2015 on the file of the Motor Accidents Claims Tribunal, Principal District Judge, Perambalur. The respondents filed the said claim petition claiming a sum of Rs.20,00,000/- as compensation for the death of one Suyambulingam who died in the accident that took place on 22.02.2015.



3. According to respondents, on 22.02.2015 at about 19:40 hrs while the deceased Suyambulingam was riding his Two Wheeler bearing Registartion No.TN 65 P 1149 from Ramanathapuram to Kilakarai Main road near Sakkarakottai Munisamy Kovil, the driver of the bus belonging to appellant-Transport Corporation, drove the bus in a rash and negligent manner and dashed against the motorcycle rode by the deceased and caused the accident. Immediately after the accident, the said Suyambulingam was taken to Government Hospital, Ramanathapuram. The Doctors examined the said Suyambulingam and declared that he was already dead. Therefore, the respondents filed the said claim petition claiming a sum of Rs.20,00,000/- as compensation against the appellant-Transport Corporation.

4. The learned counsel appearing for the appellant-Transport Corporation contended that the respondents 1 to 3 failed to prove the age, avocation and income of the deceased. In the absence of any material evidence to prove the avocation and income of the deceased, a sum of Rs.9,000/- per month fixed by the Tribunal as notional income of the deceased is excessive. He further submitted that the Tribunal fixed negligence on the part of the driver of the bus-Transport Corporation based on Ex.P1-FIR and awarded excessive compensation. In any event, the amounts awarded by the Tribunal under different heads as compensation to the respondents are excessive and prayed for setting aside the award passed by the Tribunal.

5. Before the Tribunal, the 2nd respondent examined himself as P.W.1 and one Nambu Kesavan, eyewitness to the accident was examined as P.W.2 and 19 documents were marked as Exs.P1 to P19. On behalf of the appellant, one Veerapandiyan, driver of the bus belonging to appellant-Transport Corporation was examined as R.W.1 and no documentary evidence was let in.

6. 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-Transport Corporation to pay a sum of Rs.13,90,800/- as compensation to the respondents.

7. Against the said award dated 02.11.2020 made in M.C.O.P.No.456 of 2015, the appellant-Transport Corporation has come out with the present appeal.

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



9. From the materials on record it is seen that the driver of the bus belonging to the appellant Transport Corporation has categorically deposed that the accident is not due to his fault and the deceased who came in a two wheeler from the opposite direction in a rash and negligent manner is solely responsible and he invited the accident. In support of the appellant's case, the driver of the bus was examined as R.W.1. The appellant-Transport Corporation or the driver of the bus did not lodge any complaint against the deceased nor did they file any objection to the F.I.R., which was registered against the driver of the bus. In the absence of any other materials, the Tribunal considering the evidence of P.W.2/eyewitness, Ex.P1/F.I.R. and charge sheet laid against R.W.1, accepted the evidence of P.W.2 and rejected the evidence of R.W.1. It is further stated that the FIR cannot be the sole basis for fastening the liability. It is no doubt true that the FIR is to only set the law in motion and it cannot be taken as a correct version but, however the verbal evidence tendered will have greater weight. 2011 (2) TN MAC 391 & 2016 (2) TN MAC 179, where it has been held that FIR is not a substantial piece of evidence that cannot be placed on a higher pedestal than statement of oath. In this case, there is an independent eye witness who has been examined as PW2 who has deposed that the driver of the bus was at fault who drove the bus in a rash and negligent manner and dashed against the two wheeler, which resulted in the victim sustaining fatal injuries. Though the driver has deposed in his evidence that he drove the bus carefully, he is an interested witness and that when there is an independent witness, that has got to be taken note of for arriving at a correct decision and the Tribunal has rightly accepted the evidence of PW2 and the contention of negligence taken by the Transport Corporation has been demolished by the independent witness.

10. It is further stated that, the Tribunal ought not to have taken the notional income as Rs.9,000/- when there is no evidence to prove the age, occupation and income of the deceased. With regard to the income, for the accident that took place in the year 2015, the Tribunal has taken note of evidence of PW1 wherein it has been stated that the deceased was drawing a sum of Rs.15,000/- p.m. and the Tribunal has taken note of the age of the deceased and year of accident and fixed notional income at Rs.9,000/- p.m. including the future prospects. That being the case, I find that, there is no error on the part of the Tribunal in awarding compensation and the same does not warrant any interference by this Court.



11. In the result, this Civil Miscellaneous Appeal is dismissed and the sum of Rs.13,90,800/- awarded by the Tribunal as compensation to the respondents 1 to 3, 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.456 of 2015 on the file of the Motor Accidents Claims Tribunal, Principal District Court, Perambalur. On such deposit, the respondents 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. No costs.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

dpq
To:

The Principal District Judge,
Motor Accidents Claims Tribunal,
Perambalur.

Copy to

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

+1cc to Mr.D.Venkatachalam, Advocate Sr.42364

C.M.A.No.1832 of 2021

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