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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.02.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.567 of 2021

and

C.M.P.No.3532 of 2021

The Managing Director
Tamil Nadu State Transport Corporation
Limited, Division II
Rangapuram, Vellore-9.

.. Appellant/ Respondent

Vs.

1.K.Sundari

2.P.Kumar

.. Respondents/ Petitioners

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgment and decree dated 22.08.2019 made in M.C.O.P.No.683 of 2016 on the file of the Motor Accident Claims Tribunal, District and Sessions Court, (Additional District Court, Fast Track Court), Kanchipuram.

For Appellant : Mr.K.J.Sivakumar

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant/Transport Corporation to set aside the award dated 22.08.2019 made in M.C.O.P.No.683 of 2016 on the file of the Motor Accident Claims Tribunal, District and Sessions Court, (Additional District Court, Fast Track Court), Kanchipuram.

2.The appellant/Transport Corporation is respondent in M.C.O.P.No.683 of 2016 on the file of the Motor Accident Claims Tribunal, District and Sessions Court, (Additional District Court, Fast Track Court), Kanchipuram. The respondents filed the said claim petition claiming a sum of Rs.25,00,000/- as compensation for the death of their son viz., K.Sathish, who died in the accident that took place on 05.07.2016.

3. According to the respondents, on the date of accident i.e., on 05.07.2016, at about 8.20 p.m., while the deceased Sathish was riding in his Apache motorcycle along with



one pillion rider from Oragadam Royal Enfield Company towards his house on Walajabad to Kancheepuram Highways on the extreme left side of the mud road, near opposite to C.N.Annadurai House at Little Kancheepuram, the driver of the bus, who was plying from Vellore towards Tambaram in the opposite direction, drove the same in a rash and negligent manner, suddenly turned wrong side of the road, hit the motorcycle driven by the said Sathish and caused the accident. In the accident, the said Sathish sustained fatal injuries and died on the spot. Therefore, the respondents filed the claim petition claiming compensation against the appellant/Transport Corporation.

4.The appellant/Transport corporation filed counter statement denying the averments made by the respondents and contended that the Registration number of the bus was not mentioned in the F.I.R., but it was mentioned that an unknown Government bus hit against the motorcycle of the deceased Sathish. The appellant has not received any information from the Police Station with regard to the accident. On the date of accident, the bus belonging to the appellant/Transport Corporation was not involved in the accident. Therefore, the appellant is not liable to pay any compensation to the respondents. In any event, the total compensation claimed by the respondents is excessive and prayed for dismissal of the claim petition.

5.Before the Tribunal, the 1st respondent, mother of the deceased Sathish examined herself as P.W.1, one Thangaraj, eye-witness to the accident was examined as P.W.2 and five documents were marked as Exs.P1 to P5. The appellant/Transport Corporation examined one Balakumar, Assistant Manager of the Transport Corporation, as R.W.1, but did not file any document.

6.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the bus belonging to the appellant/Transport Corporation and directed the appellant/Transport Corporation to pay a sum of Rs.12,79,600/- as compensation to the respondents.

7.To set aside the said award dated 22.08.2019 made in M.C.O.P.No.683 of 2016, 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 1st respondent has not seen the occurrence. Mere registering of F.I.R. against the driver of the bus cannot be a ground for fixing negligence on the driver of the Bus. The Registration number of the bus was not known and hence, the bus belonging to the appellant was not involved in the accident. The learned



counsel further contended that the Tribunal failed to note that no valid document was filed by the respondents to prove the age, avocation and income of the deceased. The Tribunal erred in fixing a sum of Rs.8,000/- as monthly income of the deceased Sathish, which is excessive. The amounts awarded by the Tribunal under different heads are 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 entire materials available on record.

10. From the materials on record, it is seen that it is the contention of the respondents that while the deceased Sathish was riding in his motorcycle, the driver of the bus belonging to the appellant/Transport Corporation drove the same in a rash and negligent manner, hit against the motorcycle driven by the deceased and caused the accident. To substantiate this contention, the 1st respondent examined herself as P.W.1, eye-witness to the accident examined as P.W.2, deposed about the manner of the accident and marked F.I.R. as Ex.P1, which was registered against the driver of the bus. The appellant has not examined the driver of the bus or has not let in any contra evidence to disprove the evidence of the respondents. The Tribunal considering the evidence of P.W.1, P.W.2 and F.I.R., held that the accident has occurred due to rash and negligent driving by the driver of the bus belonging to the appellant. 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 Sathish was working as a Production Planning Executive in Royal Enfield Private Company at Oragadam and was earning a sum of Rs.30,000/- per month at the time of accident. The respondents marked the salary certificate as Ex.P5 to prove the avocation and income. But the respondents have not examined the author of Ex.P5. In the absence of any valid document to prove the income, the Tribunal fixed a sum of Rs.8,000/- per month as notional income of the deceased. The accident is of the year 2016 and the monthly income fixed by the Tribunal is meagre. The Tribunal fixed the age of the deceased as 23 years, applied multiplier '18', granted 40% enhancement towards future prospects, deducted 50% towards personal expenses and awarded compensation towards loss of dependency, which is not excessive. The total compensation awarded by the Tribunal is also not excessive warranting interference by this Court.

12. In the result, this Civil Miscellaneous Appeal is dismissed and the sum of Rs.12,79,600/- awarded by the Tribunal as compensation to the respondents along with interest and



costs is confirmed. The appellant/Transport Corporation is directed to deposit the entire award amount along with interest and costs, less the amount already deposited, if any, within a period of twelve weeks from the date of receipt of a copy of this judgment. On such deposit, the respondents are permitted to withdraw their respective share of the award amount, as per the apportionment fixed by the Tribunal along with proportionate interest and costs, less the amount if any, already withdrawn. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

kj

To

1.The District and Sessions Judge
(Motor Accident Claims Tribunal),
Additional District Court, Fast Track Court
Kanchipuram.

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

+1CC to Mr.K.J.Sivakumar, Advocate, Sr.No.12402

C.M.A.No.567 of 2021
and
C.M.P.No.3532 of 2021

SPD(CO)
SB(16/11/2021)