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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.06.2021

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

CMA No.1250 of 2016
and
CMP No.9456 of 2016

The Managing Director,
Metropolitan Transport Corporation Ltd.,
Pallavan Salai,
Chennai - 600 002.

...Appellant/Respondent

Versus

1. A. Hameed Farook
2. Chitthikathaga
3. Sadam Hussain (Minor)
Minor petitioner rep. by his next friend and
father the 1st petitioner

...Respondents/Petitioners

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Acts, 1988 to set aside the award made in the M.C.O.P. No.2492 of 2010 dated 26.03.2012 on the file of Motor Accident Claims Tribunal (II Court of Small Causes, Chennai).

For Appellant : Mr.K. Moorthy

For Respondents : Mr.M.Selvam for R1 to R3

JUDGMENT

This appeal has been filed by the Transport Corporation challenging the award dated 26.03.2012 passed by the Motor Accident Claims Tribunal (II Court of Small Causes, Chennai) in MCOP No.2492 of 2010.

2. The appellant / Transport Corporation has challenged the award only on the ground that the Tribunal erred in not fixing the contributory negligence on the part of the deceased. According to them, the deceased got down from the moving bus and therefore, there is contributory negligence on his part also. With regard to the quantum of compensation fixed by the



Tribunal, even though grounds have been raised questioning the same also, the learned counsel for the appellant has not raised any serious objection with regard to the fixation of the compensation.

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3. Heard Mr.K.Moorthy, learned counsel for the appellant / Transport Corporation and Mr.M.Selvam, learned counsel for the respondents.

4. This Court has perused the materials and evidence available on record before the Tribunal.

5. Before the Tribunal, the respondents / claimants have filed 11 documents, which were marked as Exs. P1 to P11 and 3 witnesses were examined on their side viz., PW1, the father of the deceased, PW2, the employer of the deceased, and PW3, an eye witness to the accident. On the side of the appellant / Transport Corporation, they have examined Chinnasamy as RW1, who was the Driver of the bus at the time of the accident. However, they have not filed any documents before the Tribunal.

6. The appellant / Transport Corporation is relying upon the deposition of PW3, an eye witness to the accident for the purpose of establishing their case that there is contributory negligence on the part of the deceased also. In the claim petition, the respondents / claimants have pleaded that while getting down from the bus near the bus stop, the Driver of the bus drove the bus in a rash and negligent manner, which resulted in the death of the deceased. Even though PW3, who claims to be an eye witness to the accident as according to him, he was also travelling along with the deceased may have deposed that while the bus stopped in a speed breaker, some of the passengers including the deceased had got down from the bus and as a result of the same, the deceased fell down and sustained injuries, the same cannot be relied upon by the appellant / Transport Corporation as they have failed to examine the Conductor of the bus, who was inside the bus when the deceased fell down from the bus. No sketch has also been marked before the Tribunal to prove as to how the accident has happened. The appellant / Transport Corporation has not filed any documentary evidence before the Tribunal nor they have examined the Conductor or any investigating Officer (Police) to prove that the deceased was also at fault. The Tribunal has rightly appreciated the evidence available on record and come to the right conclusion that there is no contributory negligence on the part of the deceased.

7. For the aforementioned reasons, this Court is of the considered view that there is no merit in this appeal and accordingly, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.



8. The Appellant/Transport Corporation is directed to deposit the entire award amount awarded by the Tribunal together with interest at 7.5% p.a. from the date of claim petition till the date of realization, less the amount, if any, already deposited to the credit of M.C.O.P. No.2492 of 2010 on the file of the II Court of Small Causes (Motor Accidents Claims Tribunal), Chennai, within a period of six weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the 2nd respondent / 2nd claimant through RTGS, within a period of two weeks thereafter.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

vsi2

To
The Judge,
II Court of small Causes,
Chennai

Copy to:
The Section Officer,
V.R. Section
High Court of Madras,
Chennai - 104.

+1CC to Mr.M.Selvam, Advocate, Sr.No.27752
+1CC to Mr.K.Moorthy, Advocate, Sr.No.27882

CMA No.1250 of 2016

KV (CO)
K.RK. (16.11.2021)