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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.03.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.921 of 2021
and C.M.P.No.5255 of 2021

The Managing Director,
Tamil Nadu State Transport Corporation Limited,
3/137, Salamedu, Vazhuthareddy Post,
Villupuram District - 605 401. .. Appellant/Respondent

Vs.

1.Sagunthala

2.Dhanasekaran

3.Pavalakkodi

4.Alli

5.Arunthathi

6.Chitra .. Respondents/Petitioners

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 30.01.2020 made in M.C.O.P.No.289 of 2017, on the file of the III Additional District Court, (Motor Accidents Claims Tribunal), Cuddalore at Virddhachalam.

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 30.01.2020 made in M.C.O.P.No.289 of 2017, on the file of the III Additional District Court, (Motor Accidents Claims Tribunal), Cuddalore at Virddhachalam.



2.The appellant is the respondent in M.C.O.P. No.289 of 2017, on the file of the III Additional District Court, (Motor Accidents Claims Tribunal), Cuddalore at Virddhachalam. The respondents/claimants filed the said claim petition, claiming a sum of Rs.25,00,000/- as compensation for the death of one Kaliaperumal, who died in the accident that took place on 08.05.2017.

3.According to the respondents, on the date of accident, when the deceased Kaliaperumal was standing near the South side road of Pudhukooraipettai Bus Stop, the driver of a Bus bearing Registration No.TN-32-N-3955 belonging to the appellant-Transport Corporation, drove the vehicle from West to East direction in a rash and negligent manner, without honking, lost control and hit against the deceased Kaliaperumal and caused the accident. In the accident, the deceased Kaliaperumal sustained grievous injuries and died in the Hospital on 09.05.2017. The accident occurred only due to rash and negligent driving by driver of the Bus. Hence, the respondents filed the claim petition claiming compensation 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 driver of their Bus drove the vehicle with due care and caution, observing traffic rules from Palani towards Cuddalore via Vridhachalam, near Pudhukooraipettai Bus Stop, on seeing the deceased Kaliaperumal crossing the road from right side to left side, honked and applied brake. In spite of the same, the deceased Kaliaperumal hit on the left side of the Bus, fell down and sustained injuries. The accident occurred only due to the negligent act of the deceased Kaliaperumal. Hence, the appellant is not liable to pay any compensation to the respondents. The respondents have to prove the age, avocation and income of the deceased to claim compensation. 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 2nd respondent examined himself as P.W.1, one Sasikumar, eye-witness was examined 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 documents.

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 belonging to the appellant-Transport Corporation and directed the appellant to pay a sum of Rs.8,60,000/- as compensation to the respondents.

7.To set aside the award of the Tribunal dated 30.01.2020 made in M.C.O.P.No.289 of 2017, 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 erred in considering the evidence of P.W.1, who is the son of the deceased Kaliaperumal and he 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 negligent act of the deceased. Hence, the award of the Tribunal is liable to be set aside. 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. In the absence of any material documents, the Tribunal erred in fixing a sum of Rs.10,000/- per month as notional income of the deceased, 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 learned counsel appearing for the appellant-Transport Corporation and perused the materials available on record.

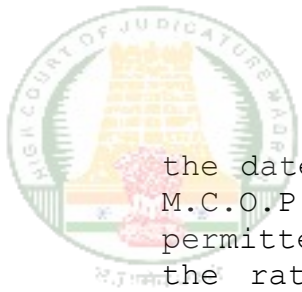
10. It is the case of the respondents that while the deceased Kaliaperumal was standing on the South side road of the Bus Stop, the driver of the Bus belonging to the appellant/Transport Corporation drove the same in a rash and negligent manner, hit against the deceased and caused the accident. To substantiate this contention, the 2nd respondent, son of the deceased Kaliaperumal, examined himself as P.W.1 and eye-witness to the accident was examined as P.W.2, who deposed about the manner of the accident. On the other hand, it is the contention of the appellant/Transport Corporation that while the Bus belonging to them was driven carefully,



the deceased negligently crossed the road without minding the horn given by the driver of the Bus, hit against the Bus, fell down 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 contention. R.W.1, the driver of the Bus is an interested witness. The Tribunal considering the evidence of P.W.2, Ex-P1/ FIR registered against the driver of the Bus and failure on the part of the appellant to examine any independent eye-witness, held that the accident has occurred only due to rash and negligent driving by the driver of the Bus belonging to 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 case of the respondents that the deceased Kaliaperuamal was a Drama Artist, earning a sum of Rs.15,000/- per month at the time of accident. The respondents did not file any documentary evidence to prove the avocation and income of the deceased. In the absence of any material evidence, the Tribunal fixed a sum of Rs.10,000/- per month as notional income of the deceased. The accident is of the year 2017. 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. There are six dependents of the deceased. The Tribunal considering the legal heir ship certificate, fixed the age of the deceased as 65 years, applied multiplier '7' and after deducting 1/4th towards personal expenses of the deceased, rightly awarded compensation towards loss of dependency. The Tribunal has awarded a sum of Rs.30,000/- each towards loss of love and affection to the respondents 2 to 6 who are the children of the deceased and Rs.40,000/- towards loss of consortium to the 1st respondent/wife of the deceased. The total compensation granted 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.8,60,000/- 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.289 of 2017. On such deposit, the respondents are permitted to withdraw their 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. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

gsa

To

1.The III Additional District Judge,
(Motor Accident Claims Tribunal),
Cuddalore at Virddhachalam.

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

+1cc to Mr.K.J.Sivakumar, Advocate SR.No.16996

C.M.A.No.921 of 2021
and
C.M.P.No.5255 of 2021

KV (CO)
GN(22/11/2021)