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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.02.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No.421 of 2021
and C.M.P.No.2707 of 2021

The Managing Director,
Tamilnadu State Transport Corporation,
Villupuram Division,
Villupuram.

.. Appellant / Respondent

Vs.

1.Kuppu

2.Minor Deepanathan

3.Minor Seenuvasan

4.Minor Bhavani

(Minors 2 to 4 rep. By their mother,
1st respondent)

.. Respondents / Petitioners

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 26.09.2018, made in M.C.O.P. No.152 of 2012, on the file of the Sub Court, (Motor Accident Claims Tribunal), Gingee.

For Appellant : Mr.K.J.Sivakumar

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant-Transport Corporation to set aside the award of the Tribunal dated 26.09.2018, made in M.C.O.P. No.152 of 2012, on the file of the Sub Court, (Motor Accident Claims Tribunal), Gingee.

2.The appellant is the respondent in M.C.O.P. No.152 of 2012, on the file of the Sub Court, (Motor Accident Claims Tribunal), Gingee. The respondents/claimants filed the said claim petition, claiming a sum of Rs.15,00,000/- as compensation for the death of one Selvam who died in the accident that took place on 15.07.2012.

3.According to the respondents, on the date of accident, the deceased was traveling in the Bus bearing Registration No.TN-32-N-1857 belonging to the appellant-Transport Corporation from Reddypalayam Village towards Kolathur Village. When the deceased



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tried to get down from the Bus near Kolathur Bus Stop, the driver of the said Bus took up the vehicle very fast and suddenly applied break, due to which the deceased fell down from the Bus and sustained fatal injuries. 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. According to the appellant, on the date of accident, the Bus involved in the accident was driven by its driver from Tiruvannamalai, slowly and carefully, following traffic rules. When the Bus was 30 feet away from the Kolathur Bus Stop, the deceased negligently got down the running Bus, inspite of the warning given by the conductor and co-passengers, fell down and sustained injuries. The FIR was registered against the driver of the Bus, based on the false information given by the 1st respondent/wife of the deceased, who was not an eye-witness. As against the said FIR, the appellant by letter No.Nil dated 16.07.2012, has requested the Station House Officer, Kelpennathur, Thiruvannamalai to re-investigate the accident and register FIR against the person responsible for the accident. Passengers who traveled in the Bus at the time of alleged accident has given statement in writing for the above fact. The accident occurred only due to the negligent act of the deceased and not due to the fault on the part of the driver of the Bus belonging to the appellant. Hence, the appellant is not liable to pay compensation to the respondents. In any event, the respondents have to prove the age, avocation and income of the deceased to claim compensation. The total compensation awarded by the Tribunal is excessive and prayed for dismissal of the claim petition.

5.Before the Tribunal, the 1st respondent examined herself as P.W.1, examined Neelakandan, eye-witness as P.W.2 and marked 4 documents as Exs.P1 to P4. The appellant examined driver of the Bus involved in the accident as R.W.1, but did not mark any document.

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.14,87,500/- as compensation to the respondents.

7.To set aside the award of the Tribunal dated 26.09.2018, made in M.C.O.P. No.152 of 2012, 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 ought not to

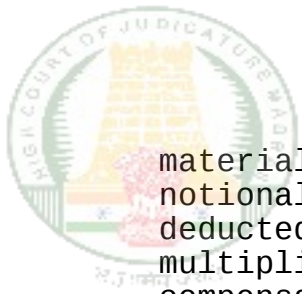


have relied merely on the FIR registered against the driver of the Bus to hold negligence on him. The Tribunal failed to consider the evidence of R.W.1 - driver of the Bus who is the competent person to speak about the accident. In the absence of any documents filed by the respondents to prove the age, avocation and income of the deceased, the Tribunal erroneously fixed a sum of Rs.7,500/- per month as notional income of the deceased. The total compensation awarded by the Tribunal is 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 materials available on record.

10. From the materials on record, it is seen that it is the contention of the respondents that when the deceased Selvam tried to get down from the Bus belonging to the appellant-Transport Corporation at Kolathur Bus Stop, the driver of the Bus took off the Bus in a rash and negligent manner, as a result of which the deceased fell down and sustained fatal injuries. FIR was registered against the driver of the offending Bus. To prove their case, the respondents examined the 1st respondent, wife of the deceased as P.W.1, eye-witness of the accident as P.W.2 and marked FIR as Ex.P1. On the other hand, it is the case of the appellant-Transport Corporation that the accident occurred when the deceased got down the running Bus despite warning given by the co-passengers and conductors not to do so, fell down and sustained injuries. The accident occurred only due to negligent act of the deceased. The appellant in their counter statement has contended that against the said FIR, by letter No.Nil dated 16.07.2012, they have requested the Station House Officer, Kelpennathur, Thiruvannamalai to re-investigate the accident and register FIR against the person responsible for the accident. From the materials on record, it is seen that except examining the driver of the Bus as R.W.1, the appellant did not produce any document to show that they objected to the contents of FIR filed against the driver of the Bus and did not examine the co-passengers of the deceased who are the eye-witness of the accident to prove their case. The Tribunal considering the evidence of P.W.1 - wife of the deceased as well as eye-witness to the accident and contents of FIR, rightly held that the accident occurred only due to the rash and negligent driving by driver of the Bus belonging to the appellant-Transport Corporation. There is no error in the award of the Tribunal warranting interference by this Court.

11. As far as quantum of compensation is concerned, the respondents contended that at the time of accident, the deceased was aged 40 years, working as an Electrician and was earning a sum of Rs.12,000/- per month. They failed to prove the avocation and income of the deceased. There are 4 dependants of the deceased. The accident is of the year 2012. In the absence of any



materials, the Tribunal fixed a sum of Rs.7,500/- per month as notional income of the deceased, granted 40% enhancement, deducted 1/4th towards personal expenses of the deceased, applied multiplier '15' and awarded a sum of Rs.14,17,500/- as compensation towards loss of dependency. The same is in order. The Tribunal has awarded a sum of Rs.40,000/- towards loss of consortium to the 1st respondent/wife of the deceased, but failed to award any amount towards loss of love and affection to the respondents 2 to 4. A sum of Rs.15,000/- each awarded by the Tribunal towards loss of estate and funeral expenses are just and reasonable. The total compensation awarded by the Tribunal is 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.14,87,500/- 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.152 of 2012. On such deposit, the 1st respondent is permitted to withdraw her share of the award amount, along 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. The shares of the minor respondents 2 to 4 are directed to be deposited in any one of the Nationalized Bank, till the minors attain majority. The 1st respondent, mother of the minor respondents 2 to 4 is permitted to withdraw the accrued interest, once in three months for the welfare of the minor respondents 2 to 4. No costs.

Sd/-

Assistant Registrar(Audit)

//True Copy//

Sub Assistant Registrar

gsa

To

The Subordinate Judge,
(Motor Accident Claims Tribunal),
Gingee.

+1cc to Mr.K.J.Sivakumar, Advocate, S.R.No.9645

C.M.A. No.421 of 2021

SRA(CO)
SB(02/09/2021)