



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.02.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.413 of 2021
and
C.M.P.No.2645 of 2021

The Managing Director,
Tamil Nadu State Transport Corporation Limited,
Division III,
Kancheepuram. ... Appellant/Respondent

Vs.

1.Arasammal
2.Sasikala
3.Karthick
4.Mohana ... Respondents/Petitioners

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 27.04.2017 made in M.C.O.P.No.185 of 2013 on the file of the Motor Accidents Claims Tribunal, Principal District Court, Kancheepuram at Chengalpattu.

For Appellant : Mr.K.J.Sivakumar

J U D G M E N T

This Civil Miscellaneous Appeal has been filed to set aside the award dated 27.04.2017 made in M.C.O.P.No.185 of 2013 on the file of the Motor Accidents Claims Tribunal, Principal District Court, Kancheepuram at Chengalpattu.

2.The appellant is the respondent in M.C.O.P.No.185 of 2013 on the file of the Motor Accidents Claims Tribunal, Principal District Court, Kancheepuram at Chengalpattu. The respondents filed the above said claim petition claiming a sum of Rs.15,00,000/- as compensation for the death of one Gajendran, who died in the accident that took place on 02.02.2011.



3. According to respondents, on 02.02.2011 at about 14.20 hours, while the deceased Gajendran was riding his bicycle along with his wife Arasammal as pillion rider on the extreme left side of the Thimmavaram - Kancheepuram High Road at Thimmavaram, the driver of the bus bearing Registration No. TN 21 N 0844 belonging to the appellant who was driving the bus in the same direction in a rash and negligent manner at high speed, lost his control and hit against the lorry which was coming in the opposite direction and then hit against the bicycle, rode by the deceased on the extreme left side of the road and caused the accident. In the accident, the said Gajendran sustained fatal injuries and taken to Chengalpattu Medical College Hospital. In spite of treatment, the said Gajendran succumbed to injuries on 02.02.2011. Therefore, the respondents filed the said claim petition claiming a sum of Rs.15,00,000/- as compensation against the appellant.

4. The appellant-Transport Corporation filed counter statement and denied all the averments made by the respondents. The appellant-Transport Corporation denied the manner of accident as alleged by the respondents. According to the appellant, at the time of accident, while the driver of the bus was driving the bus slowly by observing all traffic rules on the Kancheepuram - Chengalpet road at Thimmavaram, he saw the lorry bearing Registration No. TDF 7321 driven by its driver in a rash and negligent manner from the opposite direction. On seeing this, the driver of the bus to avoid the accident, turned the bus towards left side. In spite of the same, the lorry dashed on the right side front corner of the bus and at the same time, the deceased who was riding the bicycle on the left side of the bus lost his balance, dashed on the bus, fell down, sustained injuries and died on the spot. Therefore, the accident has occurred only due to the negligence on the part of the driver of the lorry as well as on the part of the deceased and not due to the negligence on the part of the driver of the bus belonging to appellant-Transport Corporation. Hence, the appellant is not liable to pay any compensation to the respondents. The appellant-Transport Corporation denied the age, avocation and income of the deceased. In any event, the quantum of compensation claimed by the respondents is highly excessive and prayed for dismissal of the claim petition.

5. Before the Tribunal, the 1st respondent examined herself as P.W.1 and 15 documents were marked as Exs.P1 to P15. The appellant-Transport Corporation did not let in any oral and documentary evidence.



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 to pay a sum of Rs.10,50,000/- as compensation to the respondents.

7.To set aside the award dated 27.04.2017 made in M.C.O.P.No.185 of 2013, the appellant has come out with the present appeal.

8.The learned counsel appearing for the appellant contended that the Tribunal ought not to have considered the evidence of P.W.1, who was not an eyewitness to the accident. The Tribunal ought not to have held that mere registering of F.I.R. is more enough for fixing negligence on the part of the driver of the bus. The respondents failed to prove the avocation and income of the deceased by producing valid documents. In the absence of any material evidence to prove the avocation and income, a sum of Rs.6,500/- per month fixed by the Tribunal as notional income of the deceased is excessive. The amount awarded by the Tribunal under other heads are excessive. In any event, the total compensation awarded by the Tribunal at Rs.10,50,000/- is highly excessive and prayed for setting aside the award passed by the Tribunal.

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

10.It is the case of the respondents that at the time of accident, while the deceased Gajendran was riding the bicycle along with his wife Arasammal, 1st respondent herein, on the extreme left side of the Thimmavaram - Kancheepuram High Road at Thimmavaram, the driver of the bus belonging to the appellant who was driving the bus in the same direction in a rash and negligent manner at a high speed, lost his control and hit against the lorry which was coming in the opposite direction and then hit against the bicycle, rode by the deceased on the extreme left side of the road and caused the accident. To prove the said contention, the 1st respondent examined herself as P.W.1 and marked F.I.R., which was registered against the driver of the bus as Ex.P1. On the other hand, it is the case of the appellant that while the driver of the bus was driving the bus slowly by observing all traffic rules on the Kancheepuram -



Chengalpet road at Thimmavaram, he saw the lorry bearing Registration No.TDF 7321 driven by its driver in a rash and negligent manner from the opposite direction. On seeing this, the driver of the bus to avoid the accident, turned the bus towards left side. In spite of the same, the lorry dashed on the right side front corner of the bus and at the same time, the deceased who was riding the bicycle on the left side of the bus lost his balance, dashed on the bus, fell down, sustained injuries and died on the spot. To prove the said contention, the appellant has not examined the driver of the bus or any eyewitness and has not filed any objection to the F.I.R., which was registered against the driver of the bus. The Tribunal considering the evidence of P.W.1, Ex.P1/F.I.R. and failure on the part of the appellant for not examining the driver of the bus and not filing any objection to the F.I.R., held that accident has occurred only due to the negligence on the part of the driver of the bus belonging to appellant-Transport Corporation. 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 claim of the respondents that at the time of accident, the deceased was aged 42 years, Worker in L.G.Rubber Factory, Thimmavaram and was earning a sum of Rs.12,000/- per month. But they failed to prove the said contention. In the absence of any material evidence to prove the avocation and income of the deceased, the Tribunal considering the year of accident, age and nature of work done by the deceased, fixed a sum of Rs.6,500/- per month as notional income of the deceased. The accident occurred in the year 2011. The monthly income fixed by the Tribunal is meagre. The Tribunal has also not awarded any amount towards loss of estate. Whereas, the Tribunal has granted excess amount of Rs.1,00,000/- towards loss of consortium to 1st respondent, which is excessive. In view of the meagre amount fixed as monthly income by the Tribunal and not awarding any amount towards loss of estate, the excess amount awarded by the Tribunal towards loss of consortium to 1st respondent is not interfered with. The Tribunal considering entire materials on record, has awarded a sum of Rs.10,50,000/- as compensation to the respondents, which is not excessive warranting interference by this Court.

12.In the result, this Civil Miscellaneous Appeal is dismissed and a sum of Rs.10,50,000/- 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 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.185 of 2013 on the file of the Motor Accidents Claims Tribunal, Principal District Court, Kancheepuram at Chengalpattu. 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. Consequently the connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

krk
To

The Principal District Judge,
Motor Accidents Claims Tribunal,
Chengalpattu,
Kancheepuram.

Copy to

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

+1cc to Mr.K.J.Sivakumar, Advocate Sr.9646

C.M.A.No.413 of 2021

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