



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.03.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No.665 of 2021

and

C.M.P.No.4088 of 2021

The Managing Director,
Tamil Nadu State Transport Corporation Limited,
Villupuram Division III,
Kanchipuram.

.. Appellant/2nd Respondent

Vs.

1.Soundararajan

2.Devagi

3.Kamatchi

4.Minor Thenarasi

(Minor rep. By her father/natural guardian,
1st respondent, Soundararajan)

5.Gnanaprakasam

.. Respondents/Petitioners & 1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 04.03.2017, made in M.C.O.P. No.546 of 2016, on the file of the District Court-II, (Motor Accident Claims Tribunal), Kanchipuram.

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 04.03.2017, made in M.C.O.P. No.546 of 2016, on the file of the District Court-II, (Motor Accident Claims



Tribunal), Kanchipuram.

2.The appellant is the 2nd respondent in M.C.O.P. No.546 of 2016, on the file of the District Court-II, (Motor Accident Claims Tribunal), Kanchipuram. The respondents 1 to 4/claimants filed the said claim petition, claiming a sum of Rs.9,00,000/- as compensation for the death of one Barathkumar, who died in the accident that took place on 06.04.2006.

3.According to the respondents 1 to 4, on the date of accident, when the deceased Barathkumar was riding his Two Wheeler near Rajakulam Bus Stop, on the left side of the GWT Road in a proper manner, the driver of a Bus bearing Registration No.TN-21-N-0568 belonging to the appellant-Transport Corporation, proceeding from Kanchipuram to Chennai, drove the same in a rash and negligent manner and hit behind the deceased Barathkumar and ran over his head. In the accident, the deceased Barathkumar sustained fatal injuries. The accident occurred only due to rash and negligent driving by driver of the Bus. Hence, the respondents 1 to 4 filed the claim petition claiming compensation against the 5th respondent as driver and appellant as owner of the Bus involved in the accident.

4.The 5th respondent, driver of the Bus, remained exparte before the Tribunal.

5.The appellant-Transport Corporation filed counter statement and denied all the averments made by the respondents 1 to 4 in the claim petition. According to the appellant, on the date of accident, the 5th respondent, driver of the Bus involved in the accident was driving the Bus from Kancheepuram to Chennai, observing traffic rules and when the Bus was proceeding on the left side of the road near Rajakulam, the deceased rider of the Two Wheeler suddenly turned the vehicle towards left side without noticing the Bus. In spite of the fact that the driver of the Bus applied brake to avert the accident, the deceased came in contact with the left side of the Bus and died on the spot. The accident occurred only due to rash and negligent riding of Two Wheeler by the deceased Barathkumar. Hence, the appellant is not liable to pay any compensation to the respondents 1 to 4. In any event, the respondents 1 to 4 have to prove the age, avocation and income of the deceased, to claim compensation. The total compensation claimed by the respondents 1 to 4 is excessive and prayed for dismissal of the claim petition.

6.Before the Tribunal, the 1st respondent examined himself



as P.W.1, examined one Vasu, eye-witness as P.W.2 and marked 7 documents as Exs.P1 to P7. The appellant did not let in any oral and documentary evidence.

WEB COPY

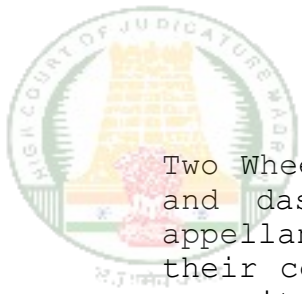
7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by driver of the Bus belonging to the appellant-Transport Corporation and directed the appellant to pay a sum of Rs.8,39,000/- as compensation to the respondents 1 to 4.

8.To set aside the award of the Tribunal dated 04.03.2017, made in M.C.O.P. No.546 of 2016, the appellant - Transport Corporation has come out with the present appeal.

9.The learned counsel appearing for the appellant/Transport Corporation contended that the Tribunal failed to note that the accident has occurred only due to rash and negligent riding of Two Wheeler by the deceased Barathkumar. The Tribunal ought not to have relied upon the evidence of P.W.1 - father of the deceased, who is not an eye witness. The Tribunal erred in holding that mere registration of FIR against the driver of the Bus is enough for holding negligence on the driver of the Bus. In the absence of any evidence by the respondents 1 to 4 to prove the age, avocation and income of the deceased, the sum of Rs.4,500/- fixed by the Tribunal as monthly income of the deceased is excessive. The total compensation awarded by the Tribunal is excessive and prayed for setting aside the award of the Tribunal.

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

11.It is the case of the respondents 1 to 4 that while the deceased Barathkumar was riding the Two Wheeler, carefully on the left side of the road, the 5th respondent, driver of the Bus belonging to the appellant/Transport Corporation drove the same in a rash and negligent manner, hit behind the Two Wheeler and caused the accident. To substantiate this contention, the 1st respondent, father of the deceased Barathkumar examined himself as P.W.1, examined eye-witness to the accident as P.W.2 and marked FIR, which was registered against the 5th respondent, as Ex.P1. On the other hand, it is the contention of the appellant/Transport Corporation that the deceased rider of the



WEB GATE

Two Wheeler suddenly turned to left side of the road negligently and dashed against their Bus and caused the accident. The appellant has not examined any independent witness to prove their contention. The Tribunal considering the evidence of P.W.2 eye-witness, FIR which was registered against the 5th respondent/driver of the Bus, failure on the part of the appellant to examine any independent eye-witness and in the absence of any objection given to the complaint lodged against the driver of the Bus, 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 1 to 4. There is no error in the said finding of the Tribunal warranting interference by this Court.

12.As far as the quantum of compensation is concerned, it is the case of the respondents 1 to 4 that the deceased Barathkumar was aged 18 years, working as an Electrical Contractor and was earning a sum of Rs.7,000/- per month at the time of accident. They failed to prove the same. In the absence of any material evidence to prove the income of the deceased, the Tribunal fixed a sum of Rs.4,500/- per month as notional income of the deceased, granted 50% enhancement towards future prospects, deducted $\frac{1}{2}$ towards personal expenses of the deceased and applying the multiplier '18', awarded compensation towards loss of dependency. The accident is of the year 2014. 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. The Tribunal has awarded a sum of Rs.25,000/- each towards loss of love and affection to the respondents 1 to 4, which is not excessive. The Tribunal has awarded meagre amount towards funeral expenses, transportation and failed to award any amount for loss of estate. The total compensation granted by the Tribunal is not excessive, warranting interference by this Court.

13.In the result, this Civil Miscellaneous Appeal is dismissed and the amount awarded by the Tribunal at Rs.8,39,000/- 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.546 of 2016. On such deposit, the respondents 1 to 3 are permitted to withdraw their 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 share of the minor 4th respondent is directed to be deposited in any one of the Nationalized Bank, till the minor attains majority. The 1st respondent, father of the minor 4th respondent is permitted to withdraw the accrued interest, once in three months for the welfare of the minor 4th respondent. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(SSA)

//True Copy//

Sub Assistant Registrar

gsa

To

1. The District Judge,
District Court-II,
(Motor Accident Claims Tribunal),
Kanchipuram.

+1cc to Mr.K.J.Sivakumar, Advocate, S.R.No.15695

C.M.A. No.665 of 2021

AJS (CO)
SU(28/10/2021)