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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.03.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1225 of 2021

and

CMP.No.6202 of 2021

The Managing Director,
Tamil Nadu State Transport Corporation Limited,
Tiruvannamalai.

.. Appellant/Respondent

Vs.

1. Vasanthi

2. C.Dasarathan

3. D.Gokul

.. Respondents/Petitioners

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 12.06.2019 made in M.C.O.P.No.240 of 2016, on the file of the Motor Accidents Claims Tribunal, III Additional District Court, Tirupattur.

For Appellant : Mr.K.J.Sivakumar

J U D G M E N T

The matter is heard through "Video Conferencing/Hybrid mode".

2.This Civil Miscellaneous Appeal has been filed to set aside the award dated 12.06.2019 made in M.C.O.P.No.240 of 2016, on the file of the Motor Accidents Claims Tribunal, III Additional District Court, Tirupattur.

3.The appellant is the respondent in M.C.O.P.No.240 of 2016, on the file of the Motor Accidents Claims Tribunal, III



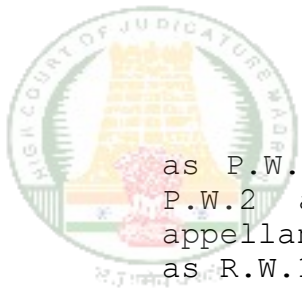
Additional District Court, Tirupattur. The respondents filed the above said claim petition claiming a sum of Rs.25,00,000/- as compensation for the death of one Arivazhagan, who died in the accident that took place on 01.01.2016.

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4. According to respondents, on 01.01.2016 at about 03.45 A.M., while the deceased Arivazhagan was riding the motorcycle bearing Registration No.TN 19 R 2016 along with one Siva as pillion rider on the Vellore Anna Salai to Thorapadi Road in front of Ooris Higher Secondary School, the driver of the bus bearing Registration No.TN 25 N 0265 belonging to appellant, who was driving the bus on the same direction behind the motorcycle driven by the said Arivazhagan, lost his control over the bus and the front foot board the bus dashed against the motorcycle. Due to the same, the said Arivazhagan and the pillion rider fell down from the motorcycle and the wheel of the bus ran over the head of the said Arivazhagan and the Siva and both of them died on the spot. Therefore, the respondents, filed the said claim petition claiming a sum of Rs.25,00,000/- as compensation for the death of said Arivazhagan against the appellant-Transport Corporation.

5. 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, on 01.01.2016, while the driver of the bus was driving the same from Bangalore to Vandavasi near Ooris Higher Secondary School, the passengers in the bus suddenly shouted. On hearing the same, the driver of the bus applied sudden brake and got down from the bus and saw the said Arivazhagan and the Siva died on the road. The rider of the motorcycle tried to cross the bus on the left side at high speed, at that time on seeing the drainage lids, got scared and applied sudden brakes and due to which, the motorcycle got dragged for about 30 feet on the left side of the road and further 24 feet on the right side and applied sudden brake. Due to the same, the pillion rider was thrown out of the motorcycle at a distance of 10 feet from the motorcycle and died on the spot. The rider and pillion rider were not wearing helmet at the time of accident. Therefore, the accident has occurred only due to the negligence on the part of the rider of the motorcycle and there is no negligence on the part of the driver of the bus. The owner and insurer of the motorcycle have to be impleaded as necessary parties in the claim petition. 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.

6. Before the Tribunal, the 2nd respondent examined himself



as P.W.1, one Mari, eyewitness to the accident was examined as P.W.2 and 8 documents were marked as Exs.P1 to P8. The appellant-Transport Corporation examined the driver of the bus as R.W.1 and no document was marked.

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7.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident has occurred only due to rash and negligent driving by the driver of the bus belonging to appellant-Transport Corporation and directed the appellant-Transport Corporation to pay a sum of Rs.14,20,800/- as compensation to the respondents 1 & 2 and dismissed the claim petition as against the 3rd respondent.

8.To set aside the award dated 12.06.2019 made in M.C.O.P.No.240 of 2016, the appellant has come out with the present appeal.

9.The learned counsel appearing for the appellant contended that the Tribunal ought not to have considered the evidence of P.W.1, who is 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 Tribunal erroneously fixed negligence on the driver of the bus merely relying on the F.I.R. The Tribunal has to independently consider the evidence let in before it. The respondents failed to prove the age, 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.9,000/- per month fixed by the Tribunal as notional income of the deceased is excessive and prayed for setting aside the award passed by the Tribunal.

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

11.It is the case of the respondents that at the time of accident, while the deceased Arivazhagan was riding the motorcycle bearing Registration No.TN 19 R 2016 along with one Siva as pillion rider on the Vellore Anna Salai to Thorapadi Road in front of Ooris Higher Secondary School, the driver of the bus bearing Registration No.TN 25 N 0265 belonging to appellant, who was driving the bus on the same direction behind the motorcycle driven by the said Arivazhagan, lost his control over the bus and the front foot board the bus dashed against the motorcycle. Due to the same, the said Arivazhagan and the pillion rider fell down from the motorcycle and the wheel of the bus ran over the head of the said Arivazhagan and the said Siva and both of them died on the spot. To prove the said contention, the 2nd respondent examined himself as P.W.1 and examined one Mari, eyewitness to the accident as P.W.2 and marked F.I.R.,



which was registered against the driver of the bus belonging to appellant as Ex.P1 and other documents. On the other hand, it is the case of the appellant-Transport Corporation that while the driver of the bus was driving the same from Bangalore to Vandavasi near Ooris Higher Secondary School, the passengers in the bus suddenly shouted. On hearing the same, the driver of the bus applied sudden brake and got down from the bus and saw the said Arivazhagan and the Siva died on the road. The rider of the motorcycle tried to cross the bus on the left side at high speed. At that time on seeing the drainage lids, got scared and applied sudden brakes. Due to same, the motorcycle got dragged for about 30 feet on the left side of the road and further 24 feet on the right side and applied sudden brake. In the said impact, the pillion rider was thrown out of the motorcycle at a distance of 10 feet from the motorcycle and died on the spot. To prove the said contention, the appellant examined the driver of the bus as R.W.1. R.W.1 is an interested witness and the appellant has not examined any other independent witness to corroborate the evidence of R.W.1. Further, the appellant or the driver of the bus have not lodged any complaint against the rider of the motorcycle 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, P.W.2, R.W.1, Ex.P1/F.I.R., which was registered against the driver of the bus and failure on the part of the appellant for not lodging any complaint against the rider of the motorcycle and not filing any objection to the F.I.R. and not examining any other independent witness except R.W.1, 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.

12.As far as quantum of compensation is concerned, it is the claim of the respondents in the claim petition that at the time of accident, the deceased was aged 21 years, working as Supervisor in Painting Department of Yamaha Company at Sriperumbudur and was earning a sum of Rs.15,000/- per month. Except oral evidence, the respondents have not produced any document to prove the avocation and income of the deceased. In the absence of any document to prove the avocation and income of the deceased, the Tribunal considering the year of accident and age of the deceased, fixed a sum of Rs.9,000/- per month as notional income of the deceased, which is not excessive. As per Ex.P7/transfer certificate, the deceased was aged 21 years at the time of accident. The Tribunal following the judgments of the Hon'ble Apex Court reported in 2009 (2) TN MAC 1 SC [Sarla Verma & Others vs. Delhi Transport Corporation & another] and 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd. v. Pranay Sethi and others] rightly applied multiplier '18' and granted



40% enhancement towards future prospects. The deceased was a bachelor at the time of accident and the Tribunal has rightly deducted 50% towards personal expenses of the deceased and awarded a sum of Rs.13,60,800/- towards loss of dependency. The Tribunal considering entire materials on record, has awarded a sum of Rs.14,20,800/- as compensation to the respondents, which is not excessive warranting interference by this Court.

13. In the result, this Civil Miscellaneous Appeal is dismissed and a sum of Rs.14,20,800/- 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.240 of 2016, on the file of the Motor Accidents Claims Tribunal, III Additional District Court, Tirupattur. On such deposit, the respondents 1 & 2 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. This appeal is dismissed as against the 3rd respondent. Consequently the connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

krk

To

1. The III Additional District Judge,
Motor Accident Claims Tribunal,
Tirupattur.
2. The Section Officer,
VR Section, High Court, Madras.

+1cc to M/s.J.Sivakumar, Advocate, S.R.No.20012

C.M.A.No.1225 of 2021

SR-II(CO)
SU(08/11/2021)