



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.03.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.806 of 2021
and
C.M.P.No.4743 of 2021

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

Vs.

1.K.Desamma
2.K.Raja
3.K.Ajith ..Respondents/Petitioners

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 04.12.2019 passed in M.C.O.P.No.56 of 2018 on the file of the Motor Accidents Claims Tribunal-I, Special District Court, Thiruvallur.

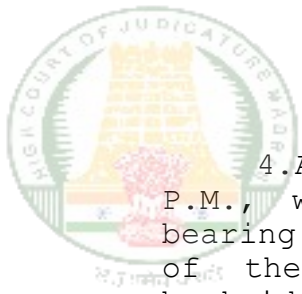
For Appellant : Mr.C.S.K.Sathish

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 04.12.2019 made in M.C.O.P.No.56 of 2018 on the file of the Motor Accidents Claims Tribunal-I, Special District Court, Thiruvallur.

3.The appellant is the respondent in M.C.O.P.No.56 of 2018 on the file of the Motor Accidents Claims Tribunal-I, Special District Court, Thiruvallur. The respondents filed the above said claim petition claiming a sum of Rs.25,00,000/- as compensation for the death of one Ranjith, who died in the accident that took place on 08.01.2017.



4. According to respondents, on 08.01.2017 at about 4.30 P.M., while the deceased Ranjith was driving the motorcycle bearing Registration No.TN-18-AE-6462 on the extreme left side of the Tada-Varadaiahpalayam Main Road near Kalki Temple backside, the driver of the TNSTC bus bearing Registration No.TN-21-N-1706 who was coming in the opposite direction drove the bus in a rash and negligent manner, lost control and dashed against the deceased and caused the accident. In the accident, the said Ranjith fell down on the road and sustained grievous injuries. Immediately after the accident, he was taken to Government Hospital, Sathyavedu. But he died on the way to hospital. Therefore, the respondents filed the said claim petition claiming a sum of Rs.25,00,000/- as compensation for the death of said Ranjith, against the appellant.

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, at the time of accident, while the driver of the bus was driving the bus slowly by observing all traffic rules from Tirupathi to Chennai, near Kalki Temple, Pathalavaram, the deceased drove his motorcycle in a high speed from the opposite direction and dashed on the right side of the bus and invited the accident. Therefore, the accident has occurred only due to the negligence 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. Therefore, the appellant is not liable to pay any compensation to the respondents. The deceased was not possessing valid driving license at the time of the accident and was not wearing helmet. Therefore, contributory negligence has to be fixed on the part of the deceased. The Tribunal ought not to have fix the negligence on the part of the driver of the bus only based on the suspension of the driver or the departmental action taken against him. F.I.R. is not the only basis to fix negligence. The respondents have already claimed the medical expenses from the Insurance Company and hence, they are not entitled to any amount towards medical expenses. 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 1st respondent examined herself as P.W.1, one Vanaraju, eyewitness to the accident was examined as P.W.2 and 8 documents were marked as Exs.P1 to P8. On behalf of the appellant-Transport Corporation, one Kennady Alexander, driver of the bus belonging to appellant was examined as R.W.1, and no document was marked.



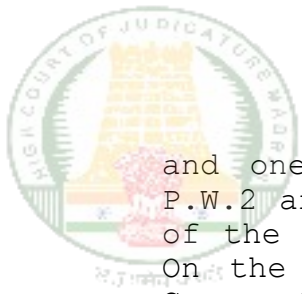
7.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the bus belonging to appellant-Transport Corporation and directed the appellant to pay a sum of Rs.15,40,800/- as compensation to the respondents.

8.To set aside the award dated 04.12.2019 made in M.C.O.P.No.56 of 2018, the appellant has come out with the present appeal.

9.The learned counsel appearing for the appellant contended that the deceased only drove his motorcycle in a rash and negligent manner from the opposite direction and dashed against the bus belonging to the appellant-Transport Corporation and invited the accident. Further the deceased was not possessing valid driving license and also not wearing helmet at the time of accident. Hence, contributory negligence has to be fixed on the part of the deceased. 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 negligence on the part of the deceased. The Tribunal erroneously fixed negligence on the part of the driver of the bus. In any event, 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.9,000/- per month fixed by the Tribunal as notional income of the deceased is excessive. A sum of Rs.50,000/- each awarded by the Tribunal to the respondents towards loss of love and affection is excessive. The total compensation awarded by the Tribunal at Rs.15,40,800/- is highly 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 Ranjith was driving the motorcycle bearing Registration No.TN-18-AE-6462 on the extreme left side of the Tada-Varadaiahpalayam Main Road near Kalki Temple backside, the driver of the TNSTC bus bearing Registration No.TN-21-N-1706 who was coming in the opposite direction drove the bus in a rash and negligent manner, lost his control and dashed against the deceased and caused the accident. To prove the said contention, the 1st respondent examined herself as P.W.1



and one Vanaraju, eyewitness to the accident was examined 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 bus slowly by observing all traffic rules from Tirupathi to Chennai, near Kalki Temple, Pathalavaram, the deceased drove his motorcycle in a high speed from the opposite direction and dashed on the right side of the bus and invited the accident. To prove the said contention, one Kennady Alexander, the driver of the bus belonging to appellant was examined as R.W.1. R.W.1 is an interested witness and the appellant has not examined any other independent witness to prove their case that the accident has occurred only due to the negligence on the part of the deceased. The Tribunal considering the evidence of P.W.1, P.W.2, R.W.1 and Ex.P1/F.I.R., which was registered against the driver of the bus, 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 23 years, Loading and Unloading Coolie, earning a sum of Rs.20,000/- per month. They did not file any document to prove the same. In the absence of any material evidence to prove the avocation and income of the deceased, the Tribunal, fixed a sum of Rs.9,000/- per month as notional income of the deceased. The accident occurred in the year 2017 and the monthly income fixed by the Tribunal is meager. The deceased was aged 23 years at the time of accident. The Tribunal, following the judgments of the Hon'ble Apex Court reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd. v. Pranay Sethi and others] and 2009 (2) TN MAC 1 SC [Sarla Verma & Others vs. Delhi Transport Corporation & another] rightly granted 40% enhancement towards future prospects and applied multiplier '18'. The deceased was a bachelor at the time of accident, therefore, the Tribunal has rightly deducted 50% of his income towards personal expenses. Further, the contention of the learned counsel appearing for the appellant that the amount awarded by the Tribunal towards love and affection is excessive is concerned, the notional income fixed by the Tribunal at Rs.9,000/- is meagre. In view of the same, the amount awarded by the Tribunal towards loss of love and affection is not interfered with. The Tribunal considering entire materials on record, has awarded a sum of Rs.15,40,800/- 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.15,40,800/- 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.56 of 2018 on the file of the Motor Accidents Claims Tribunal-I, Special District Court, Thiruvallur. On such deposit, the respondents are permitted to withdraw their respective shares 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

//True Copy//

Sub Assistant Registrar

dsa

To

1.The Special District Judge,
Motor Accident Claims Tribunal-I,
Thiruvallur.

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

+1cc to Mr.C.S.K.Sathish, Advocate Sr No.16344

C.M.A.No.806 of 2021

KV (CO)
PR (09/11/2021)