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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.02.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.NO.402 OF 2021

AND

C.M.P.NO.2627 OF 2021

The Managing Director,
M/s. Tamil Nadu State Transport Corporation Limited,
No.37, Mettupalayam Road,
Coimbatore - 641 043.

.. Appellant/Respondent

Vs.

1.Shankar Sahani
2.Dano Devi
3.Savitha Kumari
4.Kumar

.. Respondents/Petitioners

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 28.03.2018 made in M.C.O.P.No.961 of 2015 on the file of the Motor Accidents Claims Tribunal, IV Additional District & Sessions Judge, Coimbatore.

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 28.03.2018 made in M.C.O.P.No.961 of 2015 on the file of the Motor Accidents Claims Tribunal, IV Additional District & Sessions Court, Coimbatore.



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2.The appellant is the 2nd respondent in M.C.O.P.No.961 of 2015 on the file of the Motor Accidents Claims Tribunal, IV Additional District & Sessions Court, Coimbatore. The respondents 1 to 3 filed the above said claim petition claiming a sum of Rs.15,00,000/- as compensation for the death of one Bimalesh Kumar Sahani, who died in the accident that took place on 19.01.2014.

3.According to respondents 1 to 3, on 19.01.2014 at about 10.35 hours, while the deceased Bimalesh Kumar Sahani was riding as pillion rider in the motorcycle bearing Registration No.TN 38 BM 4503 from South to North direction on the Coimbatore - Mettupalayam road, in front of Press Colony Bus Stop at a normal speed by adhering Traffic Rules and Regulations, the 4th respondent-driver of the bus belonging to appellant, who was driving the bus behind the motorcycle in which the deceased was travelling as pillion rider, dashed on the rear side of the motorcycle and caused the accident. In the accident, the said Bimalesh Kumar Sahani was thrown away from the motorcycle, sustained multiple grievous injuries and died on the spot. Therefore, the respondents 1 to 3 filed the said claim petition claiming a sum of Rs.15,00,000/- as compensation against the 4th respondent and appellant.

4.The 4th respondent-driver of the bus belonging to appellant remained exparte before the Tribunal.

5.The appellant-Transport Corporation filed counter statement and denied all the averments made by the respondents 1 to 3. 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 Coimbatore to Coonoor near Press Colony, the rider of the motorcycle, in which the deceased was travelling as pillion rider, tried to overtake the bus in the left side (wrong side) of the bus in a rash and negligent manner at a reckless speed. On seeing this, the 4th respondent turned the bus towards the left side and stopped the bus. But, the rider of the motorcycle, who was riding the motorcycle at a high speed and in no mood to reduce the speed and to apply brakes, dashed against the front left side corner portion of the stationed bus, caused damages to the front left side portion of the bus and caused the accident.



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The width of the road where the accident occurred is about 12 feet and there is mud portion on either side of the road for about 2 feet each and also there was no traffic at the time of accident. Therefore, the accident has occurred only due to the negligence on the part rider of the motorcycle and not due to the negligence on the part of the driver of the bus belonging to appellant-Transport Corporation. Further, the rider of the motorcycle as well as the deceased were not wearing helmet at the time of accident. Hence, the appellant is not liable to pay any compensation to the respondents. The owner and insurer the motorcycle bearing Registration No.TN 38 BM 4503 have to be impleaded as necessary parties in the claim petition. The respondents 1 to 3 have to prove that the rider of the motorcycle was possessing valid driving license at the time of accident and also they are the legal heirs of the deceased by producing valid documents. The appellant-Transport Corporation denied the age, avocation and income of the deceased. In any event, the quantum of compensation claimed by the respondents 1 to 3 is highly excessive and prayed for dismissal of the claim petition.

6.Before the Tribunal, the 1st respondent examined himself as P.W.1, one Nagarajan was examined as P.W.2 and 18 documents were marked as Exs.P1 to P18. The appellant-Transport Corporation did not let in any oral and documentary evidence. The copy of the driving license of Nagarajan was marked as Ex.X1.

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 and 4th respondent to jointly and severally pay a sum of Rs.13,40,400/- as compensation to the respondents.

8.To set aside the award dated 28.03.2018 made in M.C.O.P.No.961 of 2015, 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 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, 4th respondent herein. 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 amounts awarded by the Tribunal under other heads are excessive. In any event, the total compensation awarded by the Tribunal at Rs.13,40,400/- 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 1 to 3 that at the time of accident, while the deceased Bimalesh Kumar Sahani was riding as pillion rider in the motorcycle bearing Registration No.TN 38 BM 4503 on the Coimbatore - Mettupalayam road, in front of Press Colony Bus Stop at a normal speed, the 4th respondent-driver of the bus belonging to appellant, who was driving the bus behind the motorcycle in which the deceased was travelling as pillion rider, dashed on the rear side of the motorcycle and caused the accident. To prove the said contention, the 1st respondent examined himself as P.W.1, examined one Nagarajan as P.W.2 and marked F.I.R., which was registered against the driver of the bus as Ex.P1 and other documents. On the other hand, it is the case of the appellant that at the time of accident, while the driver of the bus was driving the bus slowly by observing all traffic rules from Coimbatore to Coonoor near Press Colony, the rider of the motorcycle, in which the deceased was travelling as pillion rider, tried to overtake the bus in the left side (wrong side) of the bus in a rash and negligent manner at a reckless speed and on seeing this, the 4th respondent turned the bus towards the left side and stopped the bus. But, the rider of the motorcycle, who was in no mood to reduce the speed and to apply brakes, dashed against the front left side corner portion of the stationed bus and caused the accident. Further, the rider of the motorcycle as well as the deceased were not wearing helmet at the time of accident. 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. Further, the



appellant has not proved by acceptable evidence that the rider and pillion rider of the motorcycle were not wearing helmet at the time of accident. The Tribunal considering the evidence of P.W.1, Exs.P1 to P6 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.

12.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 21 years, working as Coolie and was earning a sum of Rs.500/- per day. 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, judgment of Hon'ble Apex Court, 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 2014 and the monthly income fixed by the Tribunal is meagre. The deceased was a bachelor at the time of accident but the Tribunal has erroneously deducted 1/3rd towards personal expenses of the deceased instead of deducting 50%. The Tribunal has not awarded any amount towards loss of love and affection. In view of the meagre amount fixed by the Tribunal as monthly income and not awarding any amount towards loss of love and affection, 1/3rd deduction made by the Tribunal towards personal expenses of the deceased is not interfered with. The Tribunal considering entire materials on record, has awarded a sum of Rs.13,40,400/- as compensation to the respondents 1 to 3, which is not excessive warranting interference by this Court.

13.In the result, this Civil Miscellaneous Appeal is dismissed and a sum of Rs.13,40,400/- awarded by the Tribunal as compensation to the respondents 1 to 3, along with interest and costs is confirmed. The appellant-Transport Corporation and the 4th respondent are jointly and severally 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.961 of 2015 on the file of the Motor Accidents Claims Tribunal, IV Additional District & Sessions Court, Coimbatore. On such deposit, the respondents 1 to 3 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

// True Copy //

Sub Assistant Registrar

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To

1. The IV Additional District & Sessions Judge,
Motor Accidents Claims Tribunal,
Coimbatore.
2. The Section Officer,
VR Section,
High Court,
Madras.

+1cc to Mr.K.J.Sivakumar, Advocate, S.R.No.9644

C.M.A.No.402 of 2021

SRA(CO)
RLP(16/11/2021)