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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.1181 of 2021

and

C.M.P.No.6001 of 2021

The Managing Director,
Tamil Nadu State Transport Corporation Limited,
Railway Station Road,
Kumbakonam City & Taluk & Municipalities,
Thanjavur District. .. Appellant/Respondent

Vs.

1.Anjammal
2.Abinaya
3.Minor. Aarthiya
4.Minor. Guru Eeshwaran .. Respondents / Petitioners
(Minor respondents 3 & 4 are represented by their
Mother, Anjammal, 1st respondent herein)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 08.11.2019 made in M.C.O.P.No.67 of 2018 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court, Thiruvarur.

For Appellant : Ms.P.Rajathi
for Mr.D.Raghu

For Respondents : Mr.Suganthan
for Mr.N.Manokaran

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 08.11.2019 made in M.C.O.P.No.67 of 2018 on



the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court, Thiruvarur.

3.The appellant is the respondent in M.C.O.P.No.67 of 2018 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court, Thiruvarur. The respondents filed the above said claim petition claiming a sum of Rs.40,00,000/- as compensation for the death of one Dhandapani, who died in the accident that took place on 18.06.2017.

4.According to respondents, on 18.06.2017 at about 03.00 P.M., while the deceased Dhandapani was riding as pillion rider in the motorcycle bearing Registration No.TN 50 B 2315 driven by one Gopalakrishnan on the Thiruthuraipoondi - Thiruvarur road, near Pulivalam Noorul Tea Shop, the driver of the bus bearing Registration No.TN 49 N 1394 belonging to appellant drove the same in a rash and negligent manner and dashed against the motorcycle in which the said Dhandapani was traveling as pillion rider and caused the accident. In the accident, the said Dhandapani sustained fatal injuries and died on the spot. Therefore, the respondents filed the said claim petition claiming a sum of Rs.40,00,000/- as compensation for the death of the said Dhandapani 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. The driver of the bus has given complaint to the Deputy Superintendent of Police against the F.I.R. which was erroneously lodged against him. 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 Thiruvarur to Thiruthuraipoondi near Pulivalam Tea Shop, he saw the rider of the motorcycle bearing Registration No.TN 50 B 2315 driving the motorcycle without wearing helmet. While the deceased tried to overtake the lorry which was proceeding ahead of the motorcycle without noticing the bus, which was coming in the opposite direction, dashed against the bus and invited the accident. Hence, the accident has occurred only due to the negligence on the part of the driver of the motorcycle and there was no negligence on the part of the driver of the bus. Hence, the appellant is not liable to pay any compensation to the respondents. The respondents have to prove that the rider of the



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motorcycle was possessing valid driving license and also the motorcycle was having valid insurance policy at the time of accident. The respondents have to prove that 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 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 Mahadevan, eyewitness to the accident was examined as P.W.2 and 6 documents were marked as Exs.P1 to P6. On behalf of the appellant-Transport Corporation, one Senthilkumar, 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.17,92,500/- as compensation to the respondents.

8.To set aside the award dated 08.11.2019 made in M.C.O.P.No.67 of 2018, the appellant has come out with the present appeal.

9.The learned counsel appearing for the appellant contended that the rider of the motorcycle only drove the same in a rash and negligent manner and dashed against the bus belonging to appellant and invited the accident. The Tribunal erroneously fixed the negligence on the part of the driver of the bus. The Tribunal ought not to have considered the evidence of P.W.1, whose evidence was not corroborated by any other independent witness. The Tribunal erroneously fixed negligence on the driver of the bus merely relying on the F.I.R. It is well settled that negligence cannot be fixed relying on the F.I.R. or judgments of the Criminal Court. The Tribunal has to independently consider the evidence let in before it. The Tribunal failed to note that the driver of the bus gave a complaint to the District Superintendent of Police for the F.I.R. which was falsely registered against him. The Tribunal ought to have fixed the negligence on the part of the deceased. The rider of the motorcycle did not possess valid driving license and also was not



wearing helmet at the time of accident. The total compensation awarded by the Tribunal at Rs.17,92,500/- is highly excessive and prayed for setting aside the award passed by the Tribunal.

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10.The learned counsel appearing for the respondents made his submission in support of the award passed by the Tribunal and prayed for dismissal of the appeal.

11.Heard the learned counsel appearing for the appellant-Transport Corporation as well as the learned counsel appearing for the respondents and perused the entire materials on record.

12.It is the case of the respondents that at the time of accident, while the deceased Dhandapani was riding as pillion rider in the motorcycle bearing Registration No.TN 50 B 2315 driven by one Gopalakrishnan on the Thiruthuraipoondi - Thiruvarur road, near Pulivalam Noorul Tea Shop, the driver of the bus bearing Registration No.TN 49 N 1394 belonging to appellant drove the same in a rash and negligent manner, dashed against the motorcycle in which the said Dhandapani was traveling as pillion rider and caused the accident. To prove the said contention, the 1st respondent examined herself as P.W.1, one Mahadevan, 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 Thiruvarur to Thiruthuraipoondi near Pulivalam Tea Shop, he saw the rider of the motorcycle bearing Registration No.TN 50 B 2315 driving the motorcycle without wearing helmet. The deceased tried to overtake the lorry which was proceeding ahead of the motorcycle without noticing the bus, which was coming in the opposite direction, dashed against the bus and invited the accident. To prove the said contention, the appellant examined the driver of the bus as R.W.1. The appellant or the driver of the bus have not lodged any complaint against the rider of the motorcycle. 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, it is the contention of the appellant that the driver of the bus gave a complaint to the District Superintendent of Police against the F.I.R. which was falsely registered against him. There is no evidence to show that the driver of the bus has given a complaint



to the District Superintendent of Police and also the appellant or the driver of the bus has not produced the same. 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, 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.

13.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 aged 45 years, a Two Wheeler Mechanic and was earning a sum of Rs.25,000/- per month. To prove the same, the respondents produced Ex.P6/certificate issued by the Two Wheeler Mechanic Welfare Association. The respondents have not produced any document to prove the avocation and income of the deceased. In the absence of any material evidence to prove the avocation and income of the deceased, the Tribunal considering the Division Bench judgment of this Court reported in 2019 (1) TNMAC 54 (DB), [Andal and others Vs. Avinav Kannan], fixed a sum of Rs.10,000/- per month as notional income of the deceased, which is not excessive. As per Ex.P2/postmortem certificate, the deceased was aged 49 years at the time of accident. The Tribunal, following the judgment 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 [Sarala Verma & Others vs. Delhi Transport Corporation & another] rightly granted 25% enhancement towards future prospects and applied multiplier '13'. There are four dependants of the deceased and the Tribunal has rightly deducted 1/4th towards personal expenses of the deceased. The Tribunal considering entire materials on record, has awarded a sum of Rs.17,92,500/- as compensation to the respondents, which is not excessive warranting interference by this Court.

14.In the result, this Civil Miscellaneous Appeal is dismissed and a sum of Rs.17,92,500/- 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.67 of 2018 on the file of the Motor Accidents



Claims Tribunal, Chief Judicial Magistrate Court, Thiruvarur. 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. The share of the minor respondents 3 & 4 are directed to be deposited in any one of the Nationalized Banks, till the minor respondents 3 & 4 attains majority. On such deposit, the 1st respondent, being the Mother of the minor respondents 3 & 4 is permitted to withdraw the accrued interest once in three months for the welfare of the minor respondents 3 & 4. Consequently the connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1.The Chief Judicial Magistrate,
Motor Accidents Claims Tribunal,
Thiruvarur.

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

+1cc to Mr.S.J.Mohamed Sathik, Advocate, S.R.No.20339

+1cc to M/s.D.Raghu, Advocate, S.R.No.19983

C.M.A.No.1181 of 2021

JPL(CO)
SB(08/09/2021)