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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.03.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.NO.604 OF 2021

AND

C.M.P.NO.3679 OF 2021

The Managing Director,
Tamilnadu State Transport Corporation Limited,
Division III, NH4, Ponnerikarai,
Karaipettai Village and Post,
Kanchipuram.

.. Appellant/Respondent

..Vs..

1.B.Amirtham @ Amerthammal

S.Balan (died)

2.E.Tamil Selvi

3.K.Suganya

.. Respondents/Petitioners

Prayer:

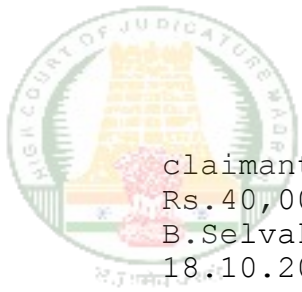
This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 22.11.2019, made in M.C.O.P. No.888 of 2017, on the file of the Additional District Court (FTC), (Motor Accident Claims Tribunal), Kanchipuram.

For Appellant : Mr.K.J.Sivakumar

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant-Transport Corporation to set aside the award of the Tribunal dated 22.11.2019, made in M.C.O.P. No.888 of 2017, on the file of the Additional District Court (FTC), (Motor Accident Claims Tribunal), Kanchipuram.

2.The appellant is the respondent in M.C.O.P. No.888 of 2017, on the file of the Additional District Court (FTC), (Motor Accident Claims Tribunal), Kanchipuram. The respondents/



claimants filed the said claim petition, claiming a sum of Rs.40,00,000/- as compensation for the death of one B.Selvakumar, who died in the accident that took place on 18.10.2017.

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3. According to the respondents, on the date of accident, when the deceased B.Selvakumar was riding a Motorcycle bearing Registration No.TN-21-AS-1746 from Varadhapuram towards Kancheepuram in the extreme left side of the road, near Siruvakkam junction road on the Parandur to Kancheepuram Road, the driver of a Bus bearing Registration No.TN-21-N-0733 belonging to the appellant-Transport Corporation drove the vehicle from Kancheepuram towards Parandur direction in a rash and negligent manner and hit against the Motorcycle rode by the deceased and caused the accident. In the accident, the deceased B.Selvakumar sustained fatal injuries. The accident occurred only due to rash and negligent driving by driver of the Bus. Hence, the respondents filed the claim petition claiming compensation against the appellant as owner of the Bus involved in the accident.

4. The appellant-Transport Corporation, filed counter statement and denied all the averments made by the respondents in the claim petition. According to the appellant, on the date of accident, when the driver of the Bus involved in the accident was driving from Kancheepuram to Chellampattarai, near Siruvakkam, on seeing the rash and negligent riding of Motorcycle by the deceased B.Selvakumar, the driver stopped the Bus at the road side. In spite of that, the deceased rider of the Motorcycle, unable to control his speed, dashed on the front side number plate, bumper and fell down and sustained injuries since he was not wearing helmet. The accident occurred only due to rash and negligent riding of Motorcycle by the deceased B.Selvakumar. The FIR has been registered against the deceased rider of the Motorcycle. For the negligence on the part of the deceased, the appellant is not liable to pay any compensation to the respondents. In any event, the total compensation claimed by the respondents is excessive and prayed for dismissal of the claim petition.

5. Before the Tribunal, the 1st respondent examined herself as P.W.1, one Moorthy, eye-witness was examined as P.W.2 and 8 documents were marked as Exs.P1 to P8. The appellant examined the driver of the Bus involved in the accident as R.W.1, but did not mark any documents.

6. 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.23,41,000/- as compensation to the respondents.

7.To set aside the award of the Tribunal dated 22.11.2019, made in M.C.O.P. No.888 of 2017, the appellant - Transport Corporation has come out with the present appeal.

8.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 Motorcycle by the deceased. The Tribunal erred in not considering the FIR registered against the rider of the Motorcycle and fixed entire negligence on the driver of the Bus. The learned counsel further contended that the Tribunal failed to note that no valid document was filed by the respondents to prove the age, avocation and income of the deceased. The Tribunal erred in fixing a sum of Rs.7,500/- as monthly income of the deceased B.Selvakumar, which is excessive. The deceased was a bachelor at the time of accident. The Tribunal erroneously awarded compensation towards loss of consortium. The amounts awarded by the Tribunal under different heads are excessive and prayed for setting aside the award of the Tribunal.

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

10.It is the case of the respondents that while the deceased B.Selvakumar was riding his Motorcycle, the driver of the Bus belonging to the appellant/Transport Corporation drove the same in a rash and negligent manner, hit against the Motorcycle rode by the deceased and caused the accident. To substantiate this contention, the 1st respondent, mother of the deceased B.Selvakumar, examined herself as P.W.1, eye-witness to the accident was examined as P.W.2, who deposed about the manner of the accident. On the other hand, it is the contention of the appellant/Transport Corporation that while the Bus belonging to them was driven carefully, the deceased/rider of the Motorcycle, drove the vehicle in a rash and negligent manner at an uncontrollable speed and hit against the Bus and caused the accident. To prove their case, the appellant examined the driver of the Bus as R.W.1. The appellant has not examined any independent witness to prove their contention. R.W.1, the driver of the Bus is an interested witness. The Tribunal considering the evidence of P.W.2 and failure on the part of the appellant to examine any independent eye-witness, 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. There is no error in the said finding of the Tribunal warranting interference by this Court.

11.As far as quantum of compensation is concerned, it is the case of the respondents that the deceased B.Selvakumar was working as a Two Wheeler Mechanic and was earning a sum of Rs.20,000/- per month at the time of accident. The respondents 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.7,500/- per month as notional income of the deceased. The accident is of the year 2017. 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 meagre. The deceased was a Bachelor at the time of accident. The Tribunal without considering the same, erroneously awarded a sum of Rs.40,000/- towards loss of consortium to the respondents, instead of granting under the head, loss of love and affection. The Tribunal failed to award any amount towards transportation. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, I find no reason to interfere with the award of the Tribunal.

12.In the result, this Civil Miscellaneous Appeal is dismissed and the amount awarded by the Tribunal at Rs.23,41,000/- 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.888 of 2017. On such deposit, the respondents are permitted to withdraw their 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, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

gsa



To

1. The Additional District Judge,
Fast Track Court,
(Motor Accident Claims Tribunal),
Kanchipuram.

2. The Section Officer,
V.R Section,
High Court, Madras.

+lcc to Mr.K.J.Sivakumar, Advocate, S.R.No.12407

+lcc to Mr.C.Prabhakaran, Advocate, S.R.No.12448

C.M.A.No.604 of 2021

AD(CO)
CS/09/09/2021