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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.03.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.NO.911 OF 2021

AND

C.M.P.NO.5226 OF 2021

The Managing Director,
Tamil Nadu State Transport Corporation Limited,
VPM, Kanchipuram - 603 105.

.. Appellant/Respondent

.Vs.

1.Kasthuri
2.Mani @ Manikandan
3.Ranjith
4.Sathish

.. Respondents/Petitioners

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 16.10.2019 made in M.C.O.P.No.4769 of 2017, on the file of the IV Small Causes Court, (Motor Accidents Claims Tribunal), Chennai.

For Appellant : Mr.K.J.Sivakumar

J U D G M E N T

(The matter is heard through "Video Conferencing/Hybrid mode")

This Civil Miscellaneous Appeal has been filed by the appellant-Transport Corporation to set aside the award of the Tribunal dated 16.10.2019 made in M.C.O.P.No.4769 of 2017, on the file of the IV Small Causes Court, (Motor Accidents Claims Tribunal), Chennai.

2.The appellant is the respondent in M.C.O.P. No.4769 of 2017, on the file of the IV Small Causes Court, (Motor Accidents Claims Tribunal), Chennai. The respondents/claimants filed the



said claim petition, claiming a sum of Rs.50,00,000/- as compensation for the death of one Chandran, who died in the accident that took place on 23.08.2016.

3. According to the respondents, on the date of accident, when the deceased Chandran was riding a Motorcycle bearing Registration No.TN-20-BZ-2660 from Pazhaverkadu to Ponneri, near Oondiamadam, the driver of the Bus bearing Registration No.TN-21-N-0812 belonging to the appellant-Transport Corporation drove the Bus from Ponneri towards Pazhaverkadu in a rash and negligent manner and hit against the Motorcycle driven by the deceased and caused the accident. In the accident, the deceased Chandran 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 Ponneri towards Pazhaverkadu, following the traffic rules, at moderate speed, near Pazhaverkadu Tank Bus Stop, on seeing the rash and negligent riding of Motorcycle by the deceased Chandran in the opposite direction, the driver reduced the speed and tried to stop the Bus. In spite of that, the deceased rider of the Motorcycle, unable to control his speed, dashed on the front left side headlight of the Bus, 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 Chandran. The contents of the FIR is not correct. The Motor Vehicle Inspection Report discloses the damages on the Bus and negligent driving of Motorcycle by the deceased in the opposite direction which caused the accident. For the negligence on the part of the deceased, the appellant is not liable to pay any compensation to the respondents. The respondents have to prove the age, avocation and income of the deceased to claim compensation. 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 P.Sunilkumar, eye-witness was examined as P.W.2 and 15 documents were marked as Exs.P1 to P15. 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.13,89,000/- as compensation to the respondents.

7.To set aside the award of the Tribunal dated 16.10.2019 made in M.C.O.P.No.4769 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 consider the evidence let in by the appellant and erroneously fixed negligence on the driver of the Bus merely relying on the FIR. FIR is not a cyclopedia. 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 rider of the motorcycle/ deceased. Hence, the award of the Tribunal is liable to be set aside. 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. In the absence of any material documents, the Tribunal erred in fixing a sum of Rs.10,000/- per month as notional income of the deceased. The Tribunal erred in awarding a sum of Rs.2,25,000/- towards loss of love and affection to the respondents 2 to 4, who are married sons and not dependants of the deceased. The amounts awarded by the Tribunal under different heads are excessive and prayed for setting aside the award of the Tribunal.

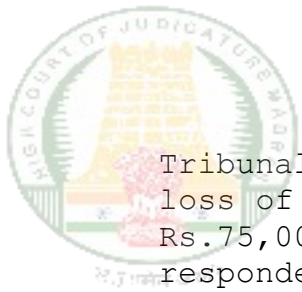
9.Heard learned counsel appearing for the appellant-Transport Corporation and perused the materials available on record.

10.It is the case of the respondents that while the deceased Chandran 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, wife of the deceased Chandran, 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 from opposite direction, 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, Ex-P1/FIR registered against the driver of the Bus 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, though it is claimed in the claim petition that the deceased Chandran was working as a Building Contractor and was earning a sum of Rs.15,000/- per month at the time of accident, P.W.1 in her cross-examination has deposed that the deceased was working as a Mason, which was mentioned in Ex.P1 - FIR also. The respondents did not file any documentary evidence to prove the avocation and income of the deceased. In the absence of any material evidence, the Tribunal fixed a sum of Rs.10,000/- per month as notional income of the deceased. The accident is of the year 2016. 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. There are four dependents of the deceased. It is well settled that married children, sisters and elder brothers are also dependents of the deceased. Hence, the contention of the learned counsel appearing for the appellant that respondents 2 to 4 who are the married children are not the dependents of the deceased is not acceptable. In the absence of any evidence on the side of the respondents to prove the age of the deceased, the Tribunal considering the age of the 1st respondent/wife of the deceased, which is 43 years, rightly held that the age of the deceased would be between 51 to 55 years. Following the judgment of the Hon'ble Apex Court reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and others], the Tribunal granted 10% enhancement towards future prospects and applied correct multiplier '11' following the judgment of the Hon'ble Apex Court reported in 2009 (2) TNMAC 1 SC Supreme Court [Sarla Verma & others vs. Delhi Transport Corporation & another]. After deducting 1/4th towards personal expenses of the deceased, the



Tribunal awarded a sum of Rs.10,89,000/- as compensation towards loss of dependency. The Tribunal has excessively awarded a sum of Rs.75,000/- each towards loss of love and affection to the respondents 2 to 4. In view of the meagre amount fixed as monthly income of the deceased, the compensation granted towards loss of love and affection to the respondents 2 to 4 is not interfered with.

12.In the result, this Civil Miscellaneous Appeal is dismissed and the amount awarded by the Tribunal at Rs.13,89,000/- 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.4769 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 (R)

//True Copy//

Sub Assistant Registrar

gsa
To

1. The IV Judge,
Small Causes Court, (Motor Accident Claims Tribunal),
Chennai.
2. The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.K.J.Sivakumar, Advocate, S.R.No.16992

C.M.A.No.911 of 2021
and C.M.P.No.5226 of 2021

KV(CO)
CS/24/11/2021