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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.03.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.940 of 2021
and C.M.P.No.5330 of 2021

The Managing Director,
Tamil Nadu State Transport Corporation,
No.31/137, Salaimedu,
Villupuram.

.. Appellant/Respondent

Vs.

1.Nagammal

2.Ettiyan

.. Respondents/Petitioners

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 07.10.2020 made in M.C.O.P.No.305 of 2017, on the file of the Sub Court, (Motor Accidents Claims Tribunal), Gingee.

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 07.10.2020 made in M.C.O.P.No.305 of 2017, on the file of the Sub Court, (Motor Accidents Claims Tribunal), Gingee.

2.The appellant is the respondent in M.C.O.P.No.305 of 2017, on the file of the Sub Court, (Motor Accidents Claims Tribunal), Gingee. The respondents/claimants filed the said claim petition, claiming a sum of Rs.30,00,000/- as compensation for the death of one Muthusamy, who died in the accident that took place on 29.03.2017.

3.According to the respondents, on the date of accident, when the deceased Muthusamy was travelling as a pillion rider in a Motorcycle bearing Registration No.TN-16-B-3908, driven by its rider slowly, obeying the traffic rules on the extreme left side of the road, near Vadavanur Bus Stop, the driver of the Bus



bearing Registration No.TN-25-N-0113 owned by the appellant-Transport Corporation drove the same in a rash and negligent manner without obeying the traffic rules and regulations and dashed on the Motorcycle in which the deceased Muthusamy traveled as pillion rider and caused the accident. In the accident, the said Muthusamy sustained severe injuries and died on the spot. The accident occurred only due to rash and negligent driving by driver of the Bus. Hence, the respondents filed the claim petition claiming compensation for the death of Muthusamy 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, including the manner of accident. According to the appellant, on the date of accident, the Bus owned by the appellant-Transport Corporation was driven by its driver from Thiruvannamalai towards Chennai carefully with due care and caution by observing all traffic rules. On reaching Vadavanur, the rider of the Motorcycle in which the deceased Muthusamy traveled as pillion rider attempted to overtake the Bus and dashed against another Motorcycle which came in the opposite direction and caused the accident. The accident occurred only due to the negligent riding by the rider of the Motorcycle and hence, the appellant is not liable to pay any compensation to the respondents. In any event, the respondents have to prove the age, avocation and income of the deceased to claim compensation and prayed for dismissal of the claim petition.

5.Before the Tribunal, the 2nd respondent examined himself as P.W.1, examined one Mani, eye-witness as P.W.2 and 13 documents were marked as Exs.P1 to P13. The appellant examined the driver of the Bus involved in the accident as R.W.1, but did not mark any document.

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 owned by the appellant-Transport Corporation and directed the appellant to pay a sum of Rs.9,77,200/- as compensation to the respondents.

7.To set aside the award of the Tribunal dated 07.10.2020 made in M.C.O.P.No.305 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 by rider of the Motorcycle in which the deceased Muthusamy traveled



as pillion. The Tribunal ought not to have relied upon the evidence of P.W.1 - son of the deceased, who is not an eye witness. 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 rider of the Motorcycle. In the absence of any documents by the respondents to prove the age, avocation and income of the deceased Muthusamy, the monthly income of Rs.6,000/- fixed by the Tribunal is excessive. The total compensation awarded by the Tribunal is excessive and prayed for setting aside the award of the Tribunal.

9. Heard the 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 Muthusamy was riding in the Motorcycle as pillion on the extreme left side of the road, near Vadavanur Bus Stop, the driver of the Bus owned by the appellant-Transport Corporation drove the same in a rash and negligent manner without obeying the traffic rules and regulations and dashed on the Motorcycle in which the deceased Muthusamy traveled as pillion rider and caused the accident. To substantiate this contention, the 2nd respondent, son of the deceased Muthusamy examined himself as P.W.1, examined Mani, eye-witness to the accident as P.W.2 and FIR was marked as Ex.P1. On the other hand, it is the contention of the appellant/Transport Corporation that while the Bus owned by them was driven carefully, near Vadavanur, the rider of the Motorcycle in which the deceased Muthusamy traveled as pillion rider while attempting to overtake the Bus, dashed against another Motorcycle which came in the opposite direction 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 case. R.W.1, the driver of the Bus is an interested witness. The Tribunal considering the evidence of P.W.2, eye-witness and FIR which was registered against the driver of the Bus, failure on the part of the appellant to examine any independent eye-witness and in the absence of any objection filed to the FIR being registered against the driver of the Bus, held that the accident has occurred only due to rash and negligent driving by driver of the Bus owned by 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. It is the case of the respondents that the deceased was working as a Carpenter and was earning a sum of Rs.20,000/- per month at the time of accident. The respondents produced Ex.P12 - salary certificate given by a private party to prove the same. But they did not examine the author of the document to substantiate Ex.P12. Hence, the Tribunal fixed a sum of Rs.6,000/- per month as notional income of the deceased and granted 40% enhancement towards future prospects. 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 excessive. The Tribunal considering the fact that the deceased was a Bachelor aged 18 years at the time of accident, rightly applied the multiplier '18' and after deducting 50% towards personal expenses of the deceased, awarded compensation towards loss of dependency. The amounts awarded by the Tribunal under conventional heads are also not excessive, warranting interference by this Court.

12. In the result, this Civil Miscellaneous Appeal is dismissed and the amount awarded by the Tribunal at Rs.9,77,200/- 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.305 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(CO)

//True Copy//

Sub Assistant Registrar

gsa



To

1.The Subordinate Judge,
(Motor Accident Claims Tribunal),
Gingee.

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

+lcc to Mr.K.J.Siva Kumar, Advocate, S.R.No.17890

C.M.A.No.940 of 2021
and
C.M.P.No.5330 of 2021

NRL (CO)
CB (24/09/2021)