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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.03.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1167 of 2021
and C.M.P.No.5956 of 2021

The Managing Director,
Tamil Nadu State Transport Corporation Limited,
Division III, NH4 Main Road,
Ponnerikarai, Karaipettai Post,
Kanchipuram Taluk.

.. Appellant/Respondent

Vs.

1.S.Dhanalakshmi

2.Minor. S.Manikandan

3.Minor. S.Tamilselvan
(Minors Rep. By next friend / mother
S.Dhanalakshmi)

4.A.Navaneetham

5.A.Arumugam

.. Respondents/Petitioners

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 16.04.2019 made in M.C.O.P. No.687 of 2016, on the file of the Additional District Court (FTC), (Motor Accidents Claims Tribunal), Kanchipuram.

For Appellant : Mr.K.J.Sivakumar

For Respondents :Mr.M.Sivakumar (For R1 to R4)
for Mr.C.Prabakaran

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 16.04.2019 made in M.C.O.P. No.687 of 2016, on the file of the Additional District Court (FTC), (Motor Accidents Claims Tribunal), Kanchipuram.



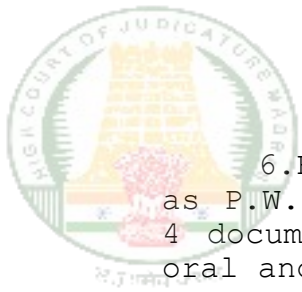
2. By consent of the learned counsel appearing for the appellant as well as the respondents 1 to 4, the appeal is taken up for final disposal at the admission stage itself.

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3. The appellant is the respondent in M.C.O.P.No.687 of 2016, on the file of the Additional District Court (FTC), (Motor Accidents Claims Tribunal), Kanchipuram. The respondents/claimants filed the said claim petition, claiming a sum of Rs.25,00,000/- as compensation for the death of one A.Settu, who died in the accident that took place on 05.08.2016.

4. According to the respondents, on the date of accident, when the deceased A.Settu was traveling as a pillion rider in a Motorcycle bearing Registration No.TN-25-AY-3684 from Kancheepuram towards Akkoor Village, at the extreme left side of the mud road, opposite to Akkoor junction road, on the Kancheepuram to Vandavasi Highways road, the driver of the Bus bearing Registration No.TN-21-N-1496 owned by the appellant-Transport Corporation drove the same in a rash and negligent manner and hit behind the Motorcycle in which the deceased was travelling and caused the accident. In the accident, the said A.Settu sustained fatal injuries. The accident occurred only due to rash and negligent driving by driver of the Bus owned by appellant. Hence, the respondents filed the claim petition claiming compensation for the death of Settu against the appellant as owner of the Bus involved in the accident.

5. 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 Kancheepuram and was proceeding towards Akkoor in a normal speed. At that time, the rider of the Motorcycle in which the deceased traveled as pillion rider, drove the vehicle in a rash and negligent manner at abnormal speed and on trying to overtake the Bus in the middle of the road, suddenly turned the Motorcycle to the left side of the road since a Lorry came from opposite direction and he caught in the right side front portion. The accident occurred only due to negligent riding by the rider of the Motorcycle in which the deceased A.Settu traveled as pillion rider 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. The total compensation claimed by the respondents is excessive and prayed for dismissal of the claim petition.



6. Before the Tribunal, the 1st respondent examined herself as P.W.1, examined one Kamaraj, eye-witness as P.W.2 and marked 4 documents as Exs.P1 to P4. The appellant did not let in any oral and documentary evidence.

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7. 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.22,12,000/- as compensation to the respondents.

8. To set aside the award of the Tribunal dated 16.04.2019 made in M.C.O.P. No.687 of 2016, the appellant - Transport Corporation has come out with the present appeal.

9. The learned counsel appearing for the appellant/Transport Corporation contended that the Tribunal failed to note that the accident has occurred only due to negligent riding by rider of the Motorcycle in which the deceased A.Settu traveled as pillion rider. The Tribunal ought not to have relied upon the evidence of P.W.1 - wife of the deceased, who is not an eye witness. The Tribunal 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. In the absence of any documents by the respondents to prove the age, avocation and income of the deceased A.Settu, the monthly income of Rs.10,000/- 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.

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

11. It is the case of the respondents that when the deceased A.Settu was traveling as a pillion rider in a Motorcycle at the extreme left side of the mud road, opposite to Akkoor junction road, on the Kancheepuram to Vandavasi Highways road, the driver of the Bus owned by the appellant-Transport Corporation drove the same in a rash and negligent manner and hit behind the Motorcycle and caused the accident. To substantiate this contention, the 1st respondent, wife of the deceased A.Settu examined herself as P.W.1, examined Kamaraj, eye-witness to the accident as P.W.2 and marked FIR as Ex.P1. On the other hand, it is the contention of the appellant/Transport Corporation that when the Bus owned by the appellant-Transport Corporation was driven by its driver towards Akkoor in a normal speed, the rider of the Motorcycle in which the deceased traveled as pillion rider, drove the vehicle in a rash and negligent manner at abnormal speed and while trying to overtake the Bus in the



middle of the road, suddenly turned the Motorcycle to the left side of the road on seeing the Lorry coming from opposite direction and dashed on the right side front portion of the Bus. The accident occurred only due to negligent riding by the rider of the Motorcycle in which the deceased A.Settu traveled as pillion rider. The appellant has not examined the driver of the Bus or any independent witness to prove their case. 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 the driver or any independent eye-witness and in the absence of any objection given to the complaint lodged 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.

12.It is the case of the respondents that the deceased was working as a Mason cum Centring Contractor and was earning a sum of Rs.20,000/- per month at the time of accident. They did not file any document to prove the same. In the absence of any evidence to prove the avocation and income, the Tribunal fixed a sum of Rs.10,000/- per month as notional income of the deceased and granted 40% enhancement towards future prospects. 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 excessive. The Tribunal considering the fact that the deceased was aged 30 years at the time of accident, rightly applied the multiplier '17' and after deducting 1/4th towards personal expenses of the deceased, as there are five dependants, awarded compensation towards loss of dependency. The amounts awarded by the Tribunal under conventional heads are also not excessive, warranting interference by this Court.

13.In the result, this Civil Miscellaneous Appeal is dismissed and the amount awarded by the Tribunal at Rs.22,12,000/- 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.687 of 2016. On such deposit, the respondents 1, 4 and 5 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 shares of the minor respondents 2 and 3 are directed to be deposited in any one of the Nationalized Bank, till the minors attain majority. The 1st respondent, mother of the minor respondents 2 and 3 is permitted to withdraw the accrued interest, once in three months for the welfare of the minor respondents 2 and 3. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar (CO)

//True copy//

Sub Assistant Registrar

gsa

To

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

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

+1cc to Mr.C.Prabakaran, Advocate SR.No.19553

+1cc to Mr.K.J.Sivakumar, Advocate SR.No.19474

C.M.A.No.1167 of 2021
and
C.M.P.No.5956 of 2021

KV (CO)
GMY (24/09/2021)