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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.960 OF 2021

AND

C.M.P.NO.5357 OF 2021

The Managing Director,
Tamil Nadu State Transport Corporation Limited,
Kancheepuram - 600 502.

...Appellant

Vs.

1.Sankari

2.Vijay

3.Kasthuri

...Respondents

Prayer : This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 20.12.2019 made in M.C.O.P.No.21 of 2016, on the file of the Sub Court, (Motor Accidents Claims Tribunal), Madurantakam.

For Appellant : Mr.K.J.Sivakumar

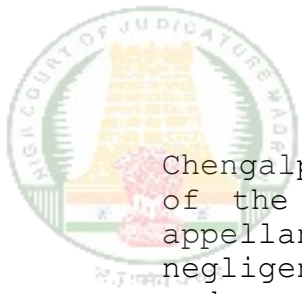
J U D G M E N T

(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 20.12.2019 made in M.C.O.P.No.21 of 2016, on the file of the Sub Court, (Motor Accidents Claims Tribunal), Madurantakam.

2.The appellant is the respondent in M.C.O.P. No.21 of 2016, on the file of the Sub Court, (Motor Accidents Claims Tribunal), Madurantakam. The respondents/claimants filed the said claim petition, claiming a sum of Rs.25,00,000/- as compensation for the death of one Sundaram, who died in the accident that took place on 03.12.2015.

3.According to the respondents, on the date of accident, when the deceased Sundaram was walking on the side of the



Chengalpattu to Madurantakam Road, near by SM Hotel, the driver of the Bus bearing Registration No.TN-21-N-1474 owned by the appellant-Transport Corporation drove the same in a rash and negligent manner at high speed, without observing traffic rules and regulations and hit on the backside of the deceased Sundaram and caused the accident. In the accident, the said Sundaram 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 Sundaram 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, when the Bus owned by them was driven by its driver from Chengalpattu to Madurantakam, near Mamandur river, near SMS Hotel, the deceased Sundaram crossed the road from North side negligently and invited the accident. At the time of accident, it was raining and hence, the driver of the Bus drove the vehicle slowly abiding by all the traffic rules. The accident occurred only due to the negligent act of the deceased Sundaram who crossed the National High Ways without seeing the oncoming vehicle. The accident has happened by the act of the God and taking advantage of the same, the respondents have claimed huge compensation, which is not permissible and prayed for dismissal of the claim petition.

5.Before the Tribunal, the 2nd respondent examined himself as P.W.1, examined one Raja, eye-witness as P.W.2 and 14 documents were marked as Exs.P1 to P14. 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.18,48,688/- as compensation to the respondents.

7.To set aside the award of the Tribunal dated 20.12.2019 made in M.C.O.P.No.21 of 2016, 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 the negligent act of the deceased Sundaram. 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 deceased Sundaram. In the absence of any documents by the respondents to prove the age, avocation and income of the deceased Sundaram, the monthly income of Rs.6,500/- fixed by the Tribunal, the sum of Rs.1,00,000/- awarded towards loss of parental consortium and Rs.25,000/- granted towards funeral expenses are 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 Sundaram was walking on the right side of the Chengalpattu to Madurantakam Road, near by SM Hotel, the driver of a Bus owned by the appellant-Transport Corporation drove the same in a rash and negligent manner at high speed, without observing traffic rules and regulations and hit on the backside of the deceased Sundaram and caused the accident. To substantiate this contention, the 2nd respondent, son of the deceased Sundaram examined himself as P.W.1, examined Raja, eye-witness to the accident as P.W.2 and marked the FIR 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, the deceased Sundaram negligently crossed the National Highways Road and invited 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 against 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 Server and was earning a sum of Rs.15,000/- per month at the time of accident. The respondents did not file any material document to prove the same. In the absence of any material evidence to prove the income of the deceased, the Tribunal considering the cost inflation for the years 2007-2008 and 2015 - 2016, fixed a sum of Rs.12,798/- per month as notional income of the deceased and granted 25% enhancement towards future prospects. The accident is of the year 2015. 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 has awarded a sum of Rs.1,00,000/- towards parental consortium to the respondents 2 and 3 who are the children of the deceased Sundaram. The Tribunal failed to award any amount towards loss of estate and transportation charges. In view of the same, the excessive amounts awarded by the Tribunal towards funeral expenses and parental consortium are not interfered with.

12. In the result, this Civil Miscellaneous Appeal is dismissed and the amount awarded by the Tribunal at Rs.18,48,688/- 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.21 of 2016. 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 Subordinate Judge,
(Motor Accident Claims Tribunal),
Madurantakam.



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

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+1cc to M/s.K.J.Sivakumar, Advocate, S.R.No.17892

C.M.A.No.960 of 2021
and
C.M.P.No.5357 of 2021

SSV(CO)
RVM(12/11/2021)