



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.03.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.962 of 2021

and

C.M.P.No.5351 of 2021

The Managing Director,
TNSTC, Salamedu,
Villupuram.

.. Appellant/Respondents

Vs.

1.Mariammal
2.P.Neelamegam
3.Pechiammal
4.Muthusamy
5.Settu

.. Respondents/Petitioners

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 23.03.2020 made in M.C.O.P.No.88 of 2019, on the file of the Special District Court, (Motor Accidents Claims Tribunal), Salem.

For Appellant : Mr.K.J.Sivakumar

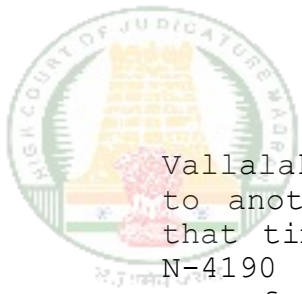
J U D G M E N T

(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 23.03.2020 made in M.C.O.P.No.88 of 2019, on the file of the Special District Court, (Motor Accidents Claims Tribunal), Salem.

2.The appellant is the respondent in M.C.O.P.No.88 of 2019, on the file of the Special District Court, (Motor Accidents Claims Tribunal), Salem. The respondents/claimants filed the said claim petition, claiming a sum of Rs.25,00,000/- as compensation for the death of one Palanivel, who died in the accident that took place on 17.10.2018.

3.According to the respondents, on the date of accident, the deceased Palanivel after alighting from a Bus at



Vallalakundam Branch Road, was crossing the road from one side to another, i.e., from North to South to go to his house. At that time, the driver of the Bus bearing Registration No.TN-32-N-4190 owned by the appellant-Transport Corporation drove the same from Attur to Salem i.e., East to West direction, in a rash and negligent manner and dashed against the deceased Palanivel and caused the accident. In the accident, the deceased Palanivel 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 for the death of Palanivel 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 the appellant-Transport Corporation was driven by its driver carefully from Villupuram to Salem, near Vellalakundam Branch Road, while overtaking a vehicle going in front of the Bus and driving at moderate speed, on seeing the deceased Palanivel crossing the road from right to left side of the road, tried to stop the Bus. In spite of the same, the deceased Palanivel came and dashed on the right side of the Bus, fell down and invited the accident. The accident occurred only due to the negligent act of the deceased Palanivel. 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 1st respondent examined himself as P.W.1, examined one Mahalingam, eye-witness as P.W.2 and marked 16 documents as Exs.P1 to P16. The appellant did not let in any oral and documentary evidence.

6.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to negligence of both the deceased Palanivel as well as the driver of the Bus and apportioned 15:85 negligence on both of them respectively and directed the appellant-Transport corporation to pay a sum of Rs.11,41,000/-, as compensation to the respondents 1 to 4. The Tribunal dismissed the claim petition as against the 5th respondent.

7.To set aside the award of the Tribunal dated 23.03.2020 made in M.C.O.P.No.88 of 2019, 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 negligent act of the deceased Palanivel who suddenly crossed the road without seeing the on coming vehicle. 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 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. In the absence of any documents by the respondents to prove the age, avocation and income of the deceased Palanivel, the monthly income of Rs.9,000/- 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 Palanivel, after alighting from a Bus at Vallalakundam Branch Road, was crossing the road from North to South, the driver of the Bus owned by the appellant-Transport Corporation drove the same from Attur to Salem i.e., East to West direction, in a rash and negligent manner and dashed against the deceased Palanivel and caused the accident. To substantiate this contention, the 1st respondent, wife of the deceased Palanivel examined herself as P.W.1, examined Mahalingam, eye-witness to the accident as P.W.2 and marked FIR which was registered against the driver of the Bus 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 from Villupuram to Salem, near Vellalakundam Branch Road at moderate speed, on seeing the deceased Palanivel suddenly crossing the road from right to left side, tried to stop the Bus. In spite of the same, the deceased Palanivel dashed on the right side of the Bus, fell down and invited the accident. 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, in the absence of any objection given to the FIR registered against the driver of the Bus, held that the driver of the Bus was rash and negligent in driving the Bus and also, held had the deceased Palanivel been careful while crossing the road, the accident would have been averted. Hence, the Tribunal fixed 15% contributory negligence on the part of the deceased Palanivel and 85% contributory negligence on the



part of the driver of the Bus. 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 Mason and was earning a sum of Rs.20,000/- per month at the time of accident. The respondents did not file any document to prove the same. In the absence of any evidence, the Tribunal fixed a sum of Rs.9,000/- per month as notional income of the deceased and granted 25% enhancement towards future prospects. The accident is of the year 2018. 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 42 years at the time of accident, rightly applied the multiplier '14' and after deducting $1/3^{\text{rd}}$ towards personal expenses of the deceased, arrived at a sum of Rs.12,60,000/- towards loss of dependency. After deducting 15% towards contributory negligence fixed on the part of the deceased, the Tribunal rightly awarded a sum of Rs.10,71,000/- 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.11,41,000/- 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.88 of 2019. On such deposit, the respondents 1 to 4 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. The appeal is dismissed as against the 5th respondent. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

gsa



To

1. The Special District Judge,
(Motor Accident Claims Tribunal),
Salem.

WEB COPY

Copy To

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

+1cc to Mr.K.J.Sivakumar, TNSTC & SETC, Advocate, S.R.No. 17893

C.M.A.No.962 of 2021
and
C.M.P.No.5351 of 2021

NK(CO)
GN(21/09/2021)