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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

C.M.A.No.2294 of 2021
and CMP.No.12746 of 2021

The Managing Director,
Tamil Nadu State Transport Corporation,
Kumbakonam Ltd., Kumbakonam,
Railway Station Road, Kumbakonam Nagar,
Kumbakonam Taluk and Thanjavur District.

... Appellant/First Respondent

Vs.

1. Veerapriya

2. Minor.Veera Shalini
(Minor Rep.by her Mother Veerapriya)

3. Kamatchi ... Respondents/Petitioners 1,
2 and 2nd Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 05.02.2021 made in M.C.O.P.No.38 of 2019 on the file of the Motor Accidents Claims Tribunal, Additional District Judge, Fast Track Mahila Court, Nagapattinam.

For Appellant : Mr.D.Venkatachalam

J U D G M E N T

The matter is heard through "Video Conferencing".

This Civil Miscellaneous Appeal has been filed to set aside the award dated 05.02.2021 made in M.C.O.P.No.38 of 2019 on the file of the Motor Accidents Claims Tribunal, Additional District Judge, Fast Track Mahila Court, Nagapattinam.

2. The appellant is the respondent in M.C.O.P.No.38 of 2019 on the file of the Motor Accidents Claims Tribunal,



Additional District Judge, Fast Track Mahila Court, Nagapattinam. The respondents filed the above said claim petition claiming a sum of Rs.60,00,000/- as compensation for the death of one Kundrakudi, who died in the accident that took place on 11.06.2017.

3. According to respondents, on 11.06.2017 at about 8:00 p.m., while the deceased Kundrakudi was riding his TVS Scooty from Thiruthuraipoondi to Vedaranyam road, the driver of the bus bearing Registration No.TN 49 1422 belonging to the appellant-Transport Corporation was driving the bus behind the deceased and came in a rash and negligent manner and hit against the TVS Scooty, rode by the deceased and caused the accident. In the accident, the said Kundrakudi sustained fatal injuries and taken to Thiruthuraipoondi Government Hospital, but the deceased Kundrakudi died on the way to the Hospital. Therefore, the respondents filed the said claim petition claiming a sum of Rs.60,00,000/- as compensation against the appellant.

4. The learned counsel appearing for the appellant-Transport Corporation contended that the respondents failed to prove the age, avocation and income of the deceased. In the absence of any material evidence to prove the avocation and income of the deceased, a sum of Rs.15,000/- per month fixed by the Tribunal as notional income of the deceased is excessive. He further submitted that the Tribunal fixed negligence on the part of the driver of the bus-Transport Corporation based on Ex.P1-FIR and awarded excessive compensation. In any event, the amounts awarded by the Tribunal under different heads as compensation to the respondents are excessive and prayed for setting aside the award passed by the Tribunal.

5. Before the Tribunal, the 1st respondent examined herself as P.W.1 and 14 documents were marked as Exs.P1 to P14. The appellant-Transport Corporation did not let in any oral and documentary evidence.

6. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the bus belonging to appellant-Transport Corporation and directed the appellant to pay a sum of Rs.28,43,000/- as compensation to the respondents.

7. To set aside the award dated 05.02.2021 made in M.C.O.P.No.38 of 2019, the appellant has come up with the present appeal.



8. The learned counsel appearing for the appellant contended that the Tribunal ought not to have considered the evidence of P.W.1, who was not an eyewitness to the accident. The Tribunal ought not to have held that mere registering of F.I.R. is more than enough for fixing negligence on the part of the driver of the bus. The respondents failed to prove the avocation and income of the deceased by producing valid documents. In the absence of any material evidence to prove the avocation and income, a sum of Rs.15,000/- per month fixed by the Tribunal as notional income of the deceased is excessive. In any event, the total compensation awarded by the Tribunal at Rs.28,43,000/- is highly excessive and prayed for setting aside the award passed by the Tribunal.

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

10. It is the case of the respondents that at the time of accident, while the deceased Kundrakudi was riding his two wheeler his TVS Scooty from Thiruthuraipoondi to Vedaranyam road, the driver of the bus bearing Registration No.TN 49 1422 belonging to the appellant-Transport Corporation was driving the bus behind the deceased and came in a rash and negligent manner and hit against the TVS Scooty, rode by the deceased and caused the accident. To prove the said contention, the 1st respondent examined herself as P.W.1 and one Manivannan P.W.2/eye witness and marked F.I.R., which was registered against the driver of the bus as Ex.P1. On the other hand, it is the case of the appellant that while the driver of the bus was driving the bus slowly by observing all traffic rules from Vedaranyam to Thiruthuraipoondi road, the two wheeler bearing Registration No.TN 49 1422 driven by the deceased suddenly turned from left to right side of the road and came in the middle of the road. The deceased dashed on the bus and invited the accident, sustained injuries and died on the way to the hospital. To prove the said contention, the appellant has not examined the driver of the bus or any eyewitness and has not filed any objection to the F.I.R., which was registered against the driver of the bus. The Tribunal considering the evidence of P.W.1, P.W.2 and Ex.P1/F.I.R. and failure on the part of the appellant for not examining the driver of the bus and not filing any objection to the F.I.R., held that accident had occurred only due to the negligence on the part of the driver of the bus belonging to appellant-Transport Corporation. There is no error in the said finding of the Tribunal warranting interference by this Court.



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11. As far as quantum of compensation is concerned, it is the claim of the respondents that at the time of accident, the deceased was aged 34 years, and worked as an electrician in Kuwait and was earning a sum of Rs.40,000/- per month. But they failed to prove the said contention. In the absence of any material evidence to prove the avocation and income of the deceased, the Tribunal considering the year of accident, age and nature of work done by the deceased, fixed a sum of Rs.15,000/- per month as notional income of the deceased. The accident occurred in the year 2017. The Tribunal considering entire materials on record, has awarded a sum of Rs.28,43,000/- as compensation to the respondents, which is not excessive warranting interference by this Court.

12. In the result, this Civil Miscellaneous Appeal is dismissed and a sum of Rs.28,43,000/- awarded by the Tribunal as compensation to the respondents, along with interest and costs is confirmed. The appellant-Transport Corporation is directed to deposit the award amount along with interest and costs, less the amount if any 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.38 of 2019 on the file of the Motor Accidents Claims Tribunal, Additional District Judge, Fast Track Mahila Court, Nagapattinam. On such deposit, the respondents 1 & 3 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 share of the minor 2nd respondent is directed to be deposited in any one of the Nationalized Banks, till the minor attains majority. On such deposit, the 1st respondent, being the mother of the minor 2nd respondent is permitted to withdraw the accrued interest once in three months for the welfare of the minor 2nd respondent. Consequently the connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

Dpq



To

The Additional District Judge,
Motor Accidents Claims Tribunal,
Fast Track Mahila Court,
Nagapattinam.

+1cc to Mr.D.Venkatachalam, Advocate SR.No.40143

C.M.A.No.2294 of 2021

PMK (CO)
GN (16/12/2021)