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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.08.2021

CORAM:

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

C.M.A.No.2435 of 2021
and CMP.No.13867 of 2021

The Managing Director,
Tamilnadu State Transport Corporation Ltd.,
(Villupuram) Limited, Salamedu
Vazhuthareddy & Post
Villupuram Taluk & District. ... Appellant/Respondent 3

Vs.

1. Minor.S. Kaviya
Rep.by her father R.Suresh ...1st Respondent/Claimant
2. M. Suresh Babu
3. K. Rafi ... Respondents 2 & 3/Respondents 1 & 2

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 04.01.2021 made in M.C.O.P.No.750 of 2018 on the file of the Motor Accident Claims Tribunal, I Additional District and Sessions Court, Vellore.

For Appellant : Mr.K.J.Sivakumar

J U D G M E N T

The Civil Miscellaneous Appeal is filed against the award dated 04.01.2021 made in M.C.O.P.No. 750 of 2018 on the file of the Motor Accident Claims Tribunal, I Additional District and Sessions Court, Vellore.

2. The short facts of the case are as follows:

On 29.04.2017, the first respondent/claimant along with her parents and deceased sister minor Lavanya were travelling in a share auto-rickshaw bearing Registration No.TN-73-B-7774 from Walajapet bus stand to Kadapperi Village, while so when the auto-rickshaw was proceeding from west to east in M.B.T.road near "Ariznar Anna Arts College for Women" Walajapet, at that time, the Government bus bearing Registration No.TN 32 N 3778 drive by its driver came in the opposite direction in a rash and



negligent manner from East to West and dashed against the auto-rickshaw on its front right side. In the accident minor Kaviya/claimant sustained lacerated wound over the right knee joint, fracture of right femur and injuries all over the body. Her sister, minor Lavanya sustained bleeding injuries in the ear and nose, open lacerated dishy wound 7x3x2 cm in scalp and open wound on right knee 3x2x2 cm in right knee and her mother Kavitha also sustained injuries all over the body. Immediately the injured persons were admitted in the Government Hospital, Walajah for first aid treatment. But the Doctor declared that the minor Lavanya was brought dead. Walajapet Police registered the case in Crime No.200/2017 under Sections 279, 337 and 304(A) of IPC regarding the accident. The first respondent/claimant filed the said claim petition, claiming a sum of Rs.20,00,000/- as compensation for the injury suffered by her in the accident that took place on 29.04.2017.

3. The appellant/Transport Corporation is the third respondent in M.C.O.P.No. 750 of 2018 on the file of the Motor Accident Claims Tribunal, I Additional District and Sessions Court, Vellore. The first respondent/claimant filed the said claim petition, claiming a sum of Rs.20,00,000/- as compensation for the injuries suffered by her in the accident that took place on 29.04.2017. The second respondent is the driver of the Auto rickshaw and 3rd respondent is the owner of the Auto-rickshaw.

4. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by both the drivers of the vehicle and are equally responsible for the accident and thus owner of the share auto-rickshaw, namely the second respondent is liable to pay 50% of compensation i.e., Rs.3,97,500/- and the owner of the bus namely the third respondent is liable to pay 50% of compensation i.e., Rs.2,57,000/- to the claimants. Challenging the said award dated 04.01.2021, made in M.C.O.P.No.750 of 2018 granting compensation to the first respondent/claimant, the appellant-Transport Corporation has come out with the present appeal.

5. The contention of the learned counsel appearing for the appellant-Transport Corporation is that the Tribunal erred in attributing contributory negligence on the ground that the drivers of both bus and Auto-Rickshaw, in which the injured was travelling, were responsible for the accident. Learned counsel further submits that the accident occurred only due to the rash



and negligent driving of the Auto-rickshaw and therefore, no liability could be fastened upon the appellant Transport Corporation.

6. Heard the learned counsel appearing for the appellant and perused the materials available on record.

7. The minor girl/claimant aged 8 years met with an accident on 29.04.2017 and that the Tribunal has foisted the liability at the ratio 50:50 on the Transport Corporation/appellant and the owner of the Auto Rickshaw/third respondent on the ground that both of them were negligent. Though it has been stated that the bus driver has driven the bus in a careful and cautious manner, the driver of the share Auto drove the vehicle in an uncontrollable manner and hit against the bus on the right side which resulted in an accident. The appellant herein has contended that the claimant has not made the insurer of the Auto-rickshaw as a party to the proceedings. A case has been registered against the driver of the Auto-rickshaw which is marked as Ex.P.2. As per the complaint, driver of the Auto-rickshaw has driven the vehicle in a rash and negligent manner. PW1 has given evidence that the driver of the bus belonging to Transport Corporation has driven the bus in a rash and negligent manner and after investigation charge sheet has been filed against the driver of the Auto-rickshaw. The Tribunal after analysing the evidence on record and taking note of the evidence of PW1 came to the conclusion that no individual witness has been examined by the Transport Corporation and foisted the liability equally on both the drivers of the vehicle. The Tribunal has also come to the conclusion that there was no valid driving license in possession of the Auto-rickshaw driver and that both the drivers were responsible for causing the major accident in which an infant suffered injuries. Therefore, the Tribunal taking note of the injuries and disability sustained by the claimant has awarded Rs.1,00,000/- towards pain and sufferings, Rs.1,05,000/- towards partial permanent disability, Rs.10,000/- towards Medical expenses, Rs.10,000/- towards loss of amenities, Rs.10,000/- towards extra nourishment, Rs.10,000/- Transportation, Rs.10,000/- towards Attender charges and Rs.2,000/- towards damages to articles. Since, I find no error in the award of the Tribunal, the award is confirmed and the appeal filed by the Transport Corporation is dismissed with the following directions.

i) Both the Transport Corporation and the third respondent/owner of the Auto Rickshaw are directed to deposit their respective shares (50% each) along with interest as



ordered by the Tribunal within a period of three months from the date of receipt of a copy of this judgement to the credit of the MCOP.No.750 of 2018 on the file of I Additional District and Sessions Judge, Vellore.

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ii) On such deposit, the Tribunal is directed to deposit the entire amount in any one of the Nationalized Banks, till the minor claimant attains majority.

iii) The father of the minor claimant viz., R.Suresh is permitted to withdraw the accrued interest alone once in three months for the welfare of the minor/claimant, by filing necessary applications before the Tribunal. In case of non deposit of the amount by the third respondent/ the owner of the Auto Rickshaw, Revenue recovery proceedings shall be initiated against him for recovery of the balance 50% of the award amount apart from initiation of action under the penal provisions if any. No costs. Consequently connected miscellaneous petition is also closed.

SD/-

ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

dpq
To

The Motor Accident Claims Tribunal,
I Additional District and Sessions Court,
Vellore.

+1cc to Mr.K.J.Sivakumar, Advocate Sr.43456

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srg 09/02/2022