



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.08.2021

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CORAM:

THE HONOURABLE MR.JUSTICE S. VAIDYANATHAN

C.M.A.No.2440 of 2021
and CMP.No.13896 of 2021

The Managing Director,
Tamil Nadu State Transport Corporation,
Villupuram,
Vellore District.

... Appellant/Respondent

Vs.

1. B. Srinivasan,
2. S. Alamelu,
3. S. Swetha,

4. Minor. S. Sarathkumar ... Respondents/Respondents
(Minor Rep.by his father B.Srinivasan)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, pleaded to set aside the Decree and Judgment dated 19.11.2020 made in M.C.O.P.No.179 of 2019 on the file of the Motor Accident Claims Tribunal, II Additional District Judge, Vellore @ Ranipet.

For Appellant : Mr.K.J.Sivakumar

J U D G M E N T

The matter is heard through "Video Conferencing/Hybrid mode".

2.This Civil Miscellaneous Appeal has been filed to set aside the award dated 19.11.2020 made in M.C.O.P.No.179 of 2019, on the file of the Motor Accidents Claims Tribunal, II Additional District Judge, Vellore @ Ranipet.

3.The appellant is the respondent in M.C.O.P.No.179 of 2019, on the file of the Motor Accidents Claims Tribunal, II Additional District Judge, Vellore @ Ranipet. The respondents filed the above said claim petition claiming a sum of Rs.30,00,000/- as compensation for the death of one Ravikumar, who died in the accident that took place on 01.04.2019.



4. According to respondents, on 01.04.2019 at about 6:30 p.m. the deceased Ravikumar was riding a Two Wheeler Hero Splendor bearing Reg.No.TN 73 AA 8188 proceeding towards Cheyyar Road and when he came opposite to Rajini Two Wheeler Mechanic Shop, the driver of TNSTC Bus bearing Reg.No.TN 23 N 2410 belonging to the Transport Corporation drove the vehicle on the opposite direction in a rash and negligent manner and hit against the two wheeler of the deceased Ravikumar and caused fatal injuries to him. Immediately after the accident he was taken to S.M.Hospital, Ranipet and then he was taken to G.H., Vellore for further treatment, but he died on the way to the hospital. A criminal case was registered against the driver of TNSTC Bus belonging to the Transport Corporation by Kalavai Police Station in Cr.No.109/2019 U/s.279, 304(A) IPC. The accident occurred only due to the rash and negligent act of the driver of TNSTC Bus belonging to the Transport Corporation. Hence the Transport Corporation as owner of TNSTC Bus is liable to compensate the claimants. The claimants are the legal heirs of the deceased Ravikumar and therefore filed the said claim petition claiming a sum of Rs.30,00,000/- as compensation for the death of said Ravikumar against the appellant-Transport Corporation.

5. The appellant-Transport Corporation filed counter statement and denied all the averments made by the respondents. The appellant-Transport Corporation denied the manner of accident as alleged by the respondents. According to the appellant, on 01.04.2019 at about 6:40 p.m. the driver of the appellant's Bus has started the Bus bearing Reg.No. TN 23 N 2410 from Cheyyar towards Vellore and when he came near Kalavai Junction in a moderate speed at that time, one person came from opposite direction not followed traffic rules and after seeing the person, the driver of the Bus has suddenly applied the break and at that time, the person has voluntarily hit against the front side of the Bus and sustained injuries on his body and died subsequently. The driver of the Bus is not liable for the accident and the deceased wantonly invited the accident. The alleged accident happened only due to the rash and negligent act of the rider of the Two Wheeler bearing Reg.No.TN 73 AA 8188. At the time of accident, the rider of the motorcycle did not possess valid driving license and he was not wearing helmet at the time of accident. The owner and insurer of the motorcycle have to be impleaded as necessary parties in the claim petition. The appellant-Transport Corporation denied the age, avocation and income of the deceased. In any event, the quantum of compensation claimed by the respondents is highly excessive and prayed for dismissal of the claim petition.



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6. Before the Tribunal, the 1st respondent examined himself as P.W.1, one Sathish, eyewitness to the accident was examined as P.W.2 and 8 documents were marked as Exs.P1 to P8. The appellant-Transport Corporation examined the driver of the bus as R.W.1 and marked one document as Ex.R1.

7. The Tribunal, considering the pleadings, oral and documentary evidence, held both the driver of the bus as well as the deceased are responsible for the accident, fixed 90% negligence on the part of the driver of the bus, 10% negligence on the part of the deceased, awarded a sum of Rs.19,49,400/- and directed the appellant-Transport Corporation to pay a sum of Rs.17,54,460/-, being 90% of the award amount as compensation to the respondents.

8. To set aside the award dated 19.11.2020 made in M.C.O.P.No.179 of 2019, the appellant has come up with the present appeal.

9. The learned counsel appearing for the appellant contended that the respondents failed to prove the age, 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.12,000/- per month fixed by the Tribunal as notional income of the deceased is excessive and prayed for setting aside the award passed by the Tribunal.

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

11. From the materials available on record, it is seen that it is the claim of the respondents that at the time of accident, the deceased was aged 20 years, working as a Farmer and Coolie and was earning a sum of Rs.30,000/- per month. Except oral evidence, the respondents have not produced any document to prove the avocation and income of the deceased. In the absence of any document to prove the avocation and income of the deceased, the Tribunal considering the year of accident, age of the deceased and following the decision of this Court in Andal and others Vs Avinav Kannan and another, 2019 (1) TNMAC 54 (DB) fixed a sum of Rs.12,000/- per month as notional income of the deceased, which is not excessive. As per Ex.P2/postmortem certificate, the deceased was aged 20 years at the time of accident. The Tribunal following the judgments of the Hon'ble Apex Court reported in 2009 (2) TN MAC 1 SC [Sarla Verma & Others vs. Delhi Transport Corporation & another] and 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd. v. Pranay Sethi and



others] rightly applied multiplier '18' and granted 40% enhancement towards future prospects. There are four dependants of the deceased and the Tribunal rightly deducted 50% towards personal expenses of the deceased and awarded a sum of Rs.18,14,400/- towards loss of dependency. The Tribunal considering entire materials on record, has awarded a sum of Rs.19,49,400/- 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 the total compensation awarded by the Tribunal at Rs.19,49,400/- is hereby confirmed. The appellant-Transport Corporation is directed to deposit 90% of the award amount, i.e., Rs.17,54,460/-, 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.179 of 2019, on the file of the Motor Accidents Claims Tribunal, II Additional District Judge, Vellore @ Ranipet. On such deposit, the respondents 1 & 2 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. No costs. Consequently the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-IX)

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Sub Assistant Registrar

dpq

To

The Motor Accident Claims Tribunal,
The II Additional District Judge,
MACT, Vellore @ Ranipet.

+1cc to Mr.K.J.Sivakumar, Advocate SR.No.43454

C.M.A.No.2440 of 2021

SVI (CO)
GN(17/02/2022)