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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.2434 of 2021

The Managing Director,
Tamilnadu State Transport Corporation Ltd.,
(Villupuram) Limited, Salamedu
Vazhathareddy & Post
Villupuram Taluk & District. ... Appellant/Respondent No.3

Vs.

1. S. Kavitha
2. R. Suresh
3. M. Suresh Babu
4.K. Rafi ... Respondents/Petitioners 1 & 2,
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.751 of 2018 on the file of the Motor Accident Claims Tribunal, I Additional District and Sessions Court, Vellore.

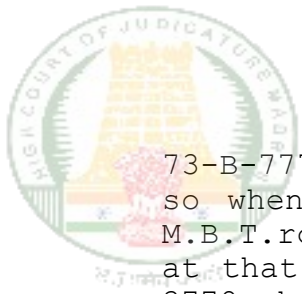
For Appellant : Mr.K.J.Sivakumar

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. 751 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 respondents 1 & 2 along with their daughters minor Kaviya and deceased 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 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 their 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 respondents 1&2/claimants filed the said claim petition, claiming a sum of Rs.20,00,000/- as compensation for the death of their daughter minor Lavanya, who died 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. 751 of 2018 on the file of the Motor Accident Claims Tribunal, I Additional District and Sessions Court, Vellore. The respondents 1 & 2 filed the said claim petition, claiming a sum of Rs.20,00,000/- as compensation for the death of their minor daughter Lavanya, who died in the accident that took place on 29.04.2017. The third respondent is the driver of the Auto rickshaw and 4th 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.3,97,500/- to the claimants. Challenging the said award dated 04.01.2021, made in M.C.O.P.No.751 of 2018 granting compensation to the respondents 1 & 2, 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 deceased 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 child of the claimants aged 6 years met with a fatal 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/fourth 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 a fatal accident. The appellant herein has contended that the claimants have 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 lost her life. Therefore, the Tribunal taking note of the fact that the future of the child is uncertain, has awarded compensation of Rs.5,000/- per month as notional income and after deducting 1/3rd towards personal expenses and applying multiplier "18" has awarded Rs.7,20,000/- and a sum of Rs.50,000/- towards loss of love and affection and Rs.15,000/- towards Funeral expenses. 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.

8. Transport Corporation is directed to deposit the amount awarded by the Tribunal within a period of three months from the date of receipt of a copy of the judgement. Thereafter the claimants are entitled to withdraw the same. It is needless to mention that the claimants are also entitled to withdraw the balance 50% of the amount if any deposited by the owner of the Auto Rickshaw as per the award of the Tribunal and in case of



non deposit of the amount the claimants shall proceed against the owner of the auto rickshaw for the recovery of the balance 50% of the award amount. No costs.

Sd/-

Assistant Registrar

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//True Copy//

Sub Assistant Registrar

dpq

To

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

2.The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.K.J.Sivakumar, Advocate, S.R.No.43458

C.M.A.No.2434 of 2021

NMI (CO)
CB(21/10/2021)