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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

C.M.A.No.2244 of 2021

and

C.M.P.No.12372 of 2021

Tamil Nadu State Transport Corporation Limited

Rep. by Managing Director,

Villupuram.

... Appellant /Respondent in Tribunal below

Vs.

1. M. Vinothkumar

2. Divya

3. Suganya

(3rd respondent declared as Major and

Amended as per I.A.No.5/2020

dated 19.11.2020) ... Respondents/Petitioners in Tribunal Below

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 18.01.2021 made in M.C.O.P.No.70 of 2011 on the file of the Motor Accidents Claims Tribunal, II Additional District Judge, Vellore @ Ranipet.

For Appellant : Mr.K.J.Sivakumar

For Respondents : Mr.C.Premkumar

J U D G M E N T

The matter is heard through "Video Conferencing".

2. This Civil Miscellaneous Appeal has been filed against the award dated 18.01.2021 made in M.C.O.P.No.70 of 2011 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.70 of



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2011 on the file of the Motor Accidents Claims Tribunal, II Additional District Judge, Vellore @ Ranipet. The respondents herein filed the said claim petition claiming a sum of Rs.10,00,000/- as compensation for the death of one Manoharan, who died in the accident that took place on 27.05.2008.

4. According to claimants/respondents, on 27.05.2008 at about 04:15 hours, the deceased Manoharan was travelling as a passenger in TNSTC Bus bearing Reg.No.TN 32 N 2232 belonging to the appellant-Transport Corporation from Tiruvannamalai to Vellore and when the Bus came near Petrol Bunk at Santhavasal village in C.C.road, the driver of above said Bus drove the vehicle in a rash and negligent manner and hit against Tamarind tree standing on the road side and due to the said impact, the bus got damaged and the deceased Manoharan died on the spot due to the crushing of his head. A criminal case was registered against the driver of TNSTC Bus belonging to the appellant by Santhavasal Police Station in Cr.No.235/2008 under Section 279, 337, 338 & 304(A) of IPC. The accident had occurred only due to the rash and negligent act of the driver of TNSTC Bus. Therefore, the respondents filed the said claim petition claiming a sum of Rs.10,00,000/- as compensation against the appellant-Transport Corporation.

5. The appellant-Transport Corporation filed counter statement and denied all the averments made by the respondents and stated that the accident had not occurred as alleged by the respondents. On 27.05.2008 the driver of the Transport Corporation Bus bearing Reg.No.TN 32 N 2232 has started the bus from Tiruvannamalai to Vellore and when he came near Petrol Bunk at Santhavasal Village in C.C.Road, in a careful manner, at that time, one Lorry came from opposite direction in a rash and negligent manner and after seeing the lorry, the driver of the bus has suddenly applied the break and lost the balance and hit against the right side of the tree. The accident had occurred only due to the rash and negligent act of the Lorry driver. Therefore, there was no negligence on the part of the driver of the appellant-Transport Corporation and the accident had occurred only due to negligence on the part of the Lorry driver. Therefore, the appellant is not liable to pay any compensation to the respondents. In any event, the quantum of compensation awarded by the Tribunal is highly excessive and prayed for dismissal of the claim petition.

6. Before the Tribunal, the 1st respondent examined himself as P.W.1, one Saravanan, eyewitness to the accident was examined as P.W.2 and 7 documents were marked as Exs.P1 to P7. The appellant-Transport Corporation did not let in any oral and



documentary evidence.

7. 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.10,00,000/- as compensation to the respondents.

8. Against the said award dated 18.01.2021 made in M.C.O.P.No.70 of 2011, the appellant-Transport Corporation has come up with the present appeal.

9. 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.12,000/- 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.

10. The learned counsel appearing for the respondents made his submissions in support of the award passed by the Tribunal and prayed for dismissal of the appeal.

11. Heard the learned counsel appearing for the appellant-Transport Corporation as well as the learned counsel appearing for the respondents and perused the entire materials on record.

12. From the materials available on record, it is seen that it is the contention of the respondents that the accident had occurred only due to rash and negligent driving by the driver of the bus belonging to appellant-Transport Corporation. To prove the said contention, the 1st respondent examined himself as P.W.1, one Saravanan, an eyewitness to the accident was examined as P.W.2, marked F.I.R. as Ex.P1, which was registered against the driver of the appellant bus and also marked Ex.P3/M.V.I. Report. In Ex.P3/M.V.I. Report, it has been mentioned that accident has not occurred due to mechanical defect of the bus. On the other hand, it is the contention of the appellant that the accident has occurred only due to negligence on the part of the driver of the lorry, who came from



the opposite direction in a rash and negligent manner and invited the accident. To prove the said contention, the appellant has not examined the driver of the bus or any eyewitness and has also not filed any document to support their contention that accident has occurred only due to negligence on the part of the lorry driver. The Tribunal considering the evidence of P.W.1, P.W.2, Exs.P1 & P3 and in the absence of any contra evidence on the part of the appellant, held that accident has occurred only due to rash and negligent driving by 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.

13. As far as quantum of compensation is concerned, the Tribunal considering all the materials in proper perspective, awarded a sum of Rs.19,00,000/- as compensation to the respondents which is not excessive and the same is hereby confirmed.

14. In the result, this Civil Miscellaneous Appeal is dismissed and the sum of Rs.19,00,000/- 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.70 of 2011 on the file of the Motor Accidents Claims Tribunal, II Additional District Judge, Vellore @ Ranipet. On such deposit, the respondents 1 to 3 are permitted to withdraw their respective shares of the award amount as per the ratio of apportionment made by the Tribunal, along with proportionate interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

Dpq



To

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

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+1cc to Mr.K.J.Sivakumar, Advocate SR.No.44203
+1cc to Mr.C.Premkumar, Advocate SR.No.43723

C.M.A.No.2244 of 2021

SPD(CO)
GN(10/01/2022)