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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.12.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1596 of 2014

and

M.P.No.1 of 2014

The Managing Director,
Tamil Nadu State Transport Corporation Limited,
No.137, Mettupalayam Road,
Coimbatore.

... Appellant/Respondent

Vs.

1.R.Gokila Mani

2.R.Priyanka

... Respondents/Claimants

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 30.09.2013 made in M.C.O.P.No.236 of 2012, on the file of the Sub Court, (Motor Accidents Claims Tribunal), Gobichettipalayam.

For Appellant : M/s.K.J.Sivakumar

For Respondents :Mr.Ma.P.Thangavel

J U D G M E N T

(The matter is heard through Video Conferencing/Hybrid mode)

This Civil Miscellaneous Appeal has been filed by the appellant-Transport Corporation to set aside the award of the Tribunal dated 30.09.2013 made in M.C.O.P.No.236 of 2012, on the file of the Sub Court, (Motor Accidents Claims Tribunal), Gobichettipalayam.

2.The appellant is the respondent in M.C.O.P. No.236 of 2012, on the file of the Sub Court, (Motor Accidents Claims Tribunal), Gobichettipalayam. The respondents/claimants filed



the said claim petition, claiming a sum of Rs.5,00,000/- as compensation for the death of one K.Ramachandran, who died in the accident that took place on 21.05.2012.

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3. According to the respondents, while the deceased was travelling in the Bus owned by the appellant on 21.05.2012 between 06.10 - 08.15 hours from Coimbatore to Gobichettipalayam as a passenger, at that time, due to the jerk of the Bus, the said K.Ramachandran sustained heart problem and died in the bus itself. Immediately after the Bus reached Gobichettipalayam Bus stand, the Conductor and Driver of the appellant Bus admitted the said K.Ramachandran in Gobichettipalayam Government Hospital, wherein the Doctor informed that the said K.Ramachandran died. FIR was registered in Gobichettipalayam Police Station in Crime No.268/2012, under Section 174 of I.P.C. The deceased was aged 54 years at the time of accident and was doing Yarn business and was earning a sum of Rs.40,000/- per annum. He was the sole bread winner of the family. The respondents are dependents of the deceased and they filed the present claim petition against the appellant, claiming a sum of Rs.5,00,000/- as compensation for the death of K.Ramachandran.

4. The appellant-Transport Corporation filed counter statement and denied all the averments in the claim petition. According to appellant, there was no accident and the averments with regard to death of the said K.Ramachandran as mentioned in the claim petition are not correct. The driver of the Bus owned by the appellant-Transport Corporation drove the Bus cautiously at moderate speed. The said K.Ramachandran died due to heart attack. The deceased, due to his age and by his ill-health, died himself while on journey. At the time of journey, the deceased has not complained to any co-passengers or Conductor for his nervesness or any inconvenience in travelling. All the passengers travelled in the Bus in that particular trip were safely arrived and there is no complaint from them about the jerk travel of the Bus. The deceased alone was responsible for the incident. There was no accident involving the vehicle of the appellant and hence, the appellant is not liable to pay any compensation to the respondents and prayed for dismissal of the claim petition.

5. Before the Tribunal, the 1st respondent examined herself as P.W.1, one U.K.Subramanian, was examined as P.W.2 and 3 documents viz., FIR, Post Mortem report and Legal heirship



certificate were marked as Exs.P1 to P3 respectively. The appellant examined the Conductor of the Bus as R.W.1 and marked the Final Report as Ex.R1.

6.The Tribunal, considering the pleadings, oral and documentary evidence, especially the evidence of P.W.2 and R.W.1 and the fact that only Conductor of the Bus was examined and Driver of the Bus was not examined, held that the said K.Ramachandran died only due to rash and negligent driving by driver of the Bus owned by the appellant and directed the appellant-Transport Corporation to pay a sum of Rs.3,84,000/- as compensation to the respondents.

7.To set aside the award of the Tribunal dated 30.09.2013 made in M.C.O.P.No.236 of 2012, the appellant - Transport Corporation has come out with the present appeal.

8.The learned counsel appearing for the appellant-Transport Corporation reiterated the averments stated in the counter statement before the Tribunal and submitted that the Tribunal failed to consider the averments in the counter statement filed by the appellant and evidence of R.W.1 - Conductor of the Bus properly. The Tribunal failed to consider the FIR and Final Report, wherein no negligence was attributed against the driver of the Bus. Referred charge sheet was filed by the Police. The Post Mortem Report clearly revealed that the death is only due to the heart attack. The Tribunal erroneously relied on the evidence of P.W.2. The said erroneous report is liable to be set aside and prayed for allowing the appeal.

9.Per contra, the learned counsel appearing for the respondents submitted that death of said K.Ramachandran has occurred due to involvement of the Bus owned by the appellant-Transport Corporation. The respondents filed the claim petition under Section 163A of the Motor Vehicles Act. Hence, they need not plead and prove the negligence on the part of the driver of the vehicle. In any event, the Tribunal, considering the evidence of P.W.2, held that the deceased died due to the jerk of the Bus. The appellant did not examine the driver of the Bus. The Tribunal considering the entire materials, directed the appellant to pay the compensation and relied on the judgment reported in (2019) 12 SCC 398 [United India Insurance Co. Ltd., Vs. Sunil Kumar and another], wherein the relevant portion reads as follows:

"9.For the aforesaid reasons, we answer the question arising by holding that in a proceeding



under Section 163-A of the Act, it is not open for the Insurer to raise any defence of negligence on the part of the victim."

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

11. From the materials on record, it is seen that no accident has occurred on the alleged day, when the deceased travelled in the Bus. It is the case of the respondents that death of K. Ramachandran was due to jerk of the Bus and due to rash and negligent driving by driver of the Bus. To substantiate their contention, the 1st respondent examined herself as P.W.1 and examined one U.K. Subramanian as P.W.2. On the other hand, it is the case of the appellant that death was naturally due to heart attack. The driver of the Bus drove the Bus cautiously and there is no complaint by passengers with regard to jerk driving. To substantiate this, the appellant examined Conductor of the Bus as R.W.1 and marked Ex.R1 - Final Report referred charge sheet. P.W.2 is alleged to have travelled in the Bus in which the deceased also travelled. He deposed that due to jerk of the Bus only, the said K. Ramachandran died. The evidence of P.W.2 is not acceptable as he has not given any complaint to the Police or he did not accompany the driver or Conductor of the Bus when the said K. Ramachandran was taken to Hospital. However, the respondents have not produced any proof like ticket issued by the Conductor to P.W.2 for having travelled in the Bus on that day. Further, P.W.2 has deposed that the deceased was earning Rs.40,000/- per month. This shows that P.W.2 is person known to the deceased. When a known person died in the Bus or did not get down from the Bus, naturally, P.W.2 would have helped him to get down from the Bus and taken to the Hospital. Considering the evidence of P.W.2 in its entirety, this Court is of the considered view that evidence of P.W.2 is not reliable and doubtful as to whether he really travelled in the Bus on that day. The appellant has examined Conductor of the Bus as R.W.1, who deposed that driver of the Bus drove the Bus carefully and there was no jerk in the Bus. The respondents have not disputed that R.W.1 was a Conductor of the appellant's Bus in which the deceased K. Ramachandran travelled. The Conductor of the Bus is also equally eligible and capable of deposing as to how the Bus was driven on that day. The Tribunal, erroneously rejected the evidence of R.W.1 on the sole ground that Driver of the Bus was not examined. In the FIR, no negligence is attributed against



the driver of the Bus. The Police, after investigation, closed the FIR and filed referred charge sheet. There is no material to show that the deceased complained of any discomfort due to jerk of the Bus to his co-passengers or Conductor or Driver. The Post Mortem report produced and marked by P.W.1 as Ex.P2 clearly reveals that death of K.Ramachandran was only due to heart attack.

12.From the claim petition it is seen that the respondents have filed claim petition under Section 163A of the Motor Vehicles Act and counsel for the respondents relied on the judgment reported in Sunil Kumar case (cited supra). When the claim petition is filed under Section 163 A, the claimants need not allege and prove the negligence. But they must prove the accident involving the vehicle. In the present case, the respondents failed to prove the accident involving the Bus owned by the appellant. The Tribunal failed to consider the materials placed before it and erroneously held that death of the said K.Ramachandran is due to rash and negligent driving by driver of the Bus owned by the appellant. For the above reason, the award of the Tribunal is set aside and the claim petition is dismissed.

In the result, the Civil Miscellaneous Appeal is allowed. No costs. Consequently, connected Miscellaneous Petition is closed. The appellant-Transport Corporation is permitted to withdraw the amount available in the deposit to the credit of M.C.O.P. No.236 of 2012, if any already deposited by them. It is made clear that if the respondents have already withdrawn the entire award amount, the appellant/Transport Corporation is not entitled to recover the same from the respondents.

SD/-
ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR

gsa
To

The Subordinate Judge,
(Motor Accidents Claims Tribunal),
Gobichettipalayam.



Copy to

The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mr.Ma.P.Thangavel, Advocate Sr.64164

C.M.A.No.1596 of 2014

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