

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.01.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No.1959 of 2020
and C.M.P. No.14462 of 2020

M/s.Tamilnadu State Transport Corporation Limited,
Kumbakonam (Division),
New Railway Station Road,
Kumbakonam. ... Appellant/Respondent

Vs.

1.Suvitha

2.Chakravarthi

3.Minor Sudhakar

4.Minor Agaliya

(Minors rep. by their next friend/mother,
1st respondent viz., Suvitha)

... Respondents/Petitioners

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 18.02.2020, made in M.C.O.P. No.838 of 2016, on the file of the Principal District Court, (Motor Accident Claims Tribunal), Perambalur.

For Appellant : Mr. D. Gopal
for M/s. D. Raghu

J U D G M E N T

The matter is heard through "Video Conferencing".

This Civil Miscellaneous Appeal has been filed by the appellant-Transport Corporation against the judgment and decree dated 18.02.2020, made in M.C.O.P. No.838 of 2016, on the file of the Principal District Court, (Motor Accident Claims Tribunal), Perambalur.

2.The appellant is the respondent in M.C.O.P. No.838 of 2016, on the file of the Principal District Court, (Motor Accident Claims Tribunal), Perambalur. The respondents/claimants filed the said claim petition, claiming a sum of Rs.25,00,000/- as compensation for the death of one Nithyaraj, who died in the accident that took place on 27.05.2016.

3.According to the respondents, on the date of accident, the deceased was traveling as pillion rider in a Two wheeler bearing Registration No.TN-68-N-0239 in Manalmedu-Kasingan, near Radhanallur bus stop at Mayiladuthurai road, Nagapattinam. While the rider of the Two wheeler rode the vehicle at extreme left side of the road, the driver of the Bus bearing Registration No.TN-68-N-0239 belonging to the appellant-Transport Corporation drove the same in a rash and negligent manner and dashed on the Two wheeler in which the deceased traveled as pillion rider and caused the accident. The accident occurred only due to negligent driving by driver of the Bus. In the accident, the deceased as well as rider of the Two wheeler succumbed to fatal injuries on the spot. Hence, the respondents filed claim petition claiming compensation against the appellant as owner of the Bus involved in the accident.

4.The appellant-Transport Corporation, filed counter statement and denied all the averments made by the respondents in the claim petition. According to the appellant, the accident occurred when rider of the Two wheeler, in which the deceased traveled as pillion, rode the same in a rash and negligent manner at a blind curve, beyond centre median at uncontrollable speed and hit against the front right side of the Bus. The accident occurred only due to rash and negligent riding by rider of the Two wheeler. Hence, the owner and insurer of the Two wheeler are liable to pay compensation to the respondents. The claim petition is bad for non-joinder of owner and insurer of the Two wheeler. The respondents have to prove that rider of the Two wheeler possessed valid driving license at the time of accident. The respondents also have to prove that they are the legal heirs of the deceased, age, avocation and income of the deceased to claim compensation. In any event, the total compensation claimed by the respondents is excessive and prayed for dismissal of the claim petition.

5.Before the Tribunal, the 2nd respondent examined herself as P.W.2, eye witness viz., Dhinesh was examined as P.W.3 and 7 documents were marked as Exs.P1 to P7. The appellant examined the driver of the Bus involved in the accident as R.W.1, but did not let in any documentary evidence.

6.The Tribunal considering the pleadings, oral and documentary evidence, held that accident occurred only due to rash and negligent driving by driver of the Bus belonging to the appellant-Transport Corporation and directed the appellant to

pay a sum of Rs.18,44,400/- as compensation to the respondents.

7. Against the said award dated 18.02.2020, made in M.C.O.P. No.838 of 2016, the appellant - Transport Corporation has come out with the present appeal.

8. The learned counsel appearing for the appellant-Transport Corporation contended that the accident occurred only due to rash and negligent riding by rider of the Two wheeler in which the deceased traveled as pillion. The rider of the Two wheeler rode the vehicle in opposite direction of the Bus and dashed on the front right side of the Bus and caused the accident. The Tribunal failed to note that the deceased did not possess valid driving license and did not wear helmet at the time of accident. The Tribunal without perusing the oral and documentary evidence on record, held that driver of the Bus was negligent, purely based on assessment and erroneously fixed liability on the appellant. The respondents failed to prove the avocation and income of the deceased. In the absence of any materials, the Tribunal erroneously fixed Rs.12,000/- per month as notional income of the deceased. The total compensation awarded by the Tribunal is excessive and prayed for setting aside the award of the Tribunal.

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

10. From the materials on record, it is seen that it is the contention of the respondents that driver of the Bus belonging to the appellant Transport Corporation drove the same in a rash and negligent manner and dashed against the Two wheeler in which the deceased was traveling as pillion and caused the accident. In the accident, the deceased as well as rider of the Two wheeler sustained fatal injuries and died. To substantiate their contention, the 1st respondent examined herself as P.W.2 and eye-witness viz., Dhinesh was examined as P.W.3 and marked FIR as Ex.P1 which was registered against the driver of the Bus. On the other hand, it is the contention of the appellant that rider of the Two wheeler in which the deceased traveled as pillion rider only caused the accident. The rider of the Two wheeler rode the same in a rash and negligent manner in opposite direction of the Bus and dashed on the front right side of the Bus and caused the accident. In support of their case, the appellant examined driver of the Bus as R.W.1. The Tribunal taking into consideration the FIR registered against R.W.1, driver of the Bus and the fact that the driver of the Bus or appellant has not given any complaint against the deceased or filed any objection to the FIR which was registered against the driver of the Bus, accepted the evidence of P.W.3 and rejected the evidence of

R.W.1. The Tribunal also took note of the fact that the appellant has not examined Conductor or any passenger and held that accident occurred only due to rash and negligent driving by driver of the Bus. There is no error in the finding of the Tribunal, warranting interference by this Court.

11.As far as the quantum of compensation is concerned, the respondents claimed that deceased was aged 21 years, working as Carpenter and was earning a sum of Rs.15,000/- per month. They failed to prove the same. In the absence of any materials, the Tribunal fixed a sum of Rs.12,000/- per month as notional income of the deceased, granted 40% enhancement towards future prospects, applied multiplier '18', deducted 50% towards personal expenses of the deceased and awarded compensation towards loss of dependency. The accident is of the year 2016. The notional income of Rs.12,000/- per month fixed by the Tribunal is not excessive. The Tribunal has granted a sum of Rs.15,000/- each towards loss of estate and funeral expenses. The Tribunal failed to award any amount towards loss of love and affection. The total compensation awarded by the Tribunal is not excessive, warranting interference by this Court.

12.In the result, this Civil Miscellaneous Appeal is dismissed and the amount awarded by the Tribunal at Rs.18,44,400/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit is confirmed. The appellant-Transport Corporation is directed to deposit the award amount along with interest and costs, less the amount already deposited, if any, 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.838 of 2016. On such deposit, the respondents 1 and 2 are permitted to withdraw their respective share of the award amount with proportionate interest and costs, as per the ratio of apportionment fixed by the Tribunal, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. The share of the minor respondents 3 and 4 are directed to be deposited in any one of the Nationalized Bank, till the minors attain majority. The 1st respondent, mother of the minor respondents 3 and 4 are permitted to withdraw the accrued interest, once in three months for the welfare of the minor respondents 3 and 4. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Principal District Judge,
(Motor Accident Claims Tribunal),
Perambalur.

Copy to:

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

+1cc to M/s.D.Raghu, Advocate Sr.No.78

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