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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.04.2021

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THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.1929 of 2020

and

C.M.P.No.14234 of 2020

The Managing Director,
Tamilnadu State Transport Corporation
(Kumbakonam) Ltd,
Periyamilaguparai,
Tiruchirapalli - 620 001.

... Appellant/Respondent

Vs.

1.P.Ramasamy

2.R.Vijaya

3.R.Chitra

4.R.Shanmuga Priya

5.R.Saravanan

6.R.Gopinath

7.R.Jayabarathi

... Respondents/Petitioners

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree order dated 13.12.2019 made in M.C.O.P.No.114 of 2017, on the file of the Motor Accidents Claims Tribunal, Principal District Court, Perambalur.

For Appellant : M/s.P.Rajathi for
Mr.D.Raghu

For Respondents : Mr.T.Gobinath for R2 to R7

JUDGMENT

The State Transport Corporation is the appellant in this appeal and is aggrieved by the impugned Judgment and decree dated 13.12.2019 passed by the Motor Accidents Claims Tribunal,



Principal District Court, Perambalur, in M.C.O.P.No.114 of 2017.

2.By the impugned judgment and decree, the Tribunal has awarded a sum of Rs.13,14,240/- together with interest at 7.5% from the date of the claim petition. The impugned judgment and decree is challenged insofar as it holds only 20% negligence on the part of the deceased. According to the claimants, the deceased was riding his motor cycle behind the bus and while attempting to over take the same, a dog crossed the bus and due to which the driver of the bus applied sudden break, as a result of which, the deceased hit the bus from the right side and came below the rear wheel of the bus on the right side.

3.On behalf of the appellant, it was stated that the deceased was negligent and responsible for the accident and therefore the Tribunal ought to have fixed atleast 50% negligence on the part of the deceased rider. It is submitted that the Tribunal has considered the evidence on record and yet concluded by 20% negligence on the part of the deceased.

4.I have considered the arguments advanced by the learned counsel for the appellant and the respondent. I have perused the impugned judgment and decree and the exhibits that were marked before the Tribunal.

5.There is no dispute as to how the accident took placement. The deceased who riding a two wheeler was trying to over take the bus. At that point of time, a dog crossed the path of the bus and therefore to avoid the dog being over run, the driver of the bus applied sudden break which resulted in a fatal accident. The driver of the bus ought to have been cautious while driving the bus.

6.Though as per the decision of the Hon'ble Supreme Court in Nishan Singh Vs. Oriental Insurance Company Ltd, it was incumbent on the part of the vehicle tailing behind another vehicle in front of it to maintain the safe distance, however, when there was an attempt over take the bus, the driver of the bus applied sudden brake. In my view, the Tribunal has come to a fair conclusion that both the deceased and the driver of the bus contributed to the accident. Therefore, fixation of 20% contributory negligence on the deceased who was aged about 33 years and supporting a family consisting of his aged parents and siblings deserved to be confirmed.

7.This Court is of the view, the Tribunal has come to a fair conclusion, while computing the compensation by deducting



20% towards negligence of the deceased. Therefore, I do not find any merits in the appeal filed by the State Transport Corporation. Accordingly, the appeal filed by the State Transport Corporation is dismissed.

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8.If the amount of compensation awarded by the Tribunal has been deposited by the State Transport Corporation, it is directed to deposit the same together with interest at 7.5% per annum from the date of filing of the claim petition till the date of such deposit, less the amount already deposited if any, within a period of six weeks from the date of receipt of the copy of this Judgment.

9.On such deposit, the 1st respondent/claimant is entitled to withdraw his amount together with interest as directed by the Tribunal, by filing suitable application before Tribunal.

10.Accordingly, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-I)

//True Copy//

Sub Assistant Registrar

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To:

1.The Motor Accidents Claims Tribunal,
Principal District Court,
Perambalur.

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

+1cc to Mr.D.Raghu, Advocate SR.No.25864
+1cc to Mr.T.Gopinath, Advocate SR.No.26173

C.M.A.No.1929 of 2020
and
C.M.P.No.14234 of 2020

PP(CO)
GN(16/12/2021)