



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.01.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No.1953 of 2020
and C.M.P. No.14447 of 2020

The Managing Director,
Tamilnadu State Transport Corporation Limited,
DO-II, Periyamilagupurai,
Trichy.

... Appellant/Respondents

Vs.

1.R.Samikkannu

2.K.Hemalatha

3.R.Rameshkumar

4.R.Dineshkumar

.. Respondents/1 to 4
Claimants

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 20.02.2020, made in M.C.O.P. No.1113 of 2016, on the file of the Sessions Judge, Mahil 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 20.02.2020, made in M.C.O.P. No.1113 of 2016, on the file of the Sessions Court, (Motor Accident Claims Tribunal), Perambalur.

2.The appellant is the respondent in M.C.O.P. No.1113 of 2016, on the file of the Sessions 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 Rajendran, who died in the accident that



took place on 3.09.2016.

3. According to the respondents, on the date of accident, when the deceased was riding his Two wheeler bearing Registration No.TN-48-U-9689 at Kadai Veethi, Somarasampettai, Trichy in Hosur to Denkanikottai Road, while waiting to cross the main road from South to North, the driver of the Bus bearing Registration No.TN-45-N-2930 belonging to the appellant-Transport Corporation drove the same in a rash and negligent manner, at hectic speed, came to extreme right and dashed against the Two wheeler driven by the deceased and caused the accident. The accident occurred due to negligent driving by driver of the Bus. In the accident, the deceased succumbed to fatal injuries. 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, on the date of accident, the driver of the Bus bearing Registration No.TN-45-N-2930 was on its trip from Pothavur to Chathiram bus stand. When the Bus came near Somarasampettai kadaiveethi 4 four road junction, the driver of the Bus following the rules of the Motor Vehicles Act, slowed down the Bus to stop at the bus stand at left side. On seeing the deceased coming from right side branch road in a rash and negligent manner, the driver of the Bus in order to avert hitting the deceased, turned the Bus to extreme left side of the road and stopped the Bus. The deceased unable to control the speed of his Two wheeler, hit on the front right side of the Bus and caused the accident. The accident occurred only due to rash and negligent riding by the deceased. The respondents have to prove the 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 1st respondent examined himself as P.W.1, eye witness viz., Nataraj was examined as P.W.2 and 5 documents were marked as Exs.P1 to P5. The appellant examined driver of the Bus as R.W.1, but did not let in any 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.11,59,000/-, as compensation to the respondents.

7. Against the said award dated 20.02.2020, made in M.C.O.P. No.1113 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 of Two wheeler by the deceased, without minding traffic rules, on the right side of the Bus. The Tribunal erroneously fixed negligence on the driver of the Bus. The respondents failed to prove the avocation and income of the deceased. In the absence of any materials, the Tribunal erroneously fixed Rs.10,000/- per month as notional income of the deceased and granted excessive amounts 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 while the deceased was waiting to cross the main road from South to North, the driver of the Bus belonging to the appellant Transport Corporation came to extreme right side and dashed against the Two wheeler in which the deceased was waiting to cross the road and caused the accident. The deceased was thrown away and sustained injuries and died. To substantiate their contention, the respondents examined P.W.2 - eye witness 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 driver of the Bus was driving the Bus carefully by sounding horn to stop the Bus at the left side of the bus stop. The driver of the Bus noticing the rider of the Two wheeler coming from the right side of the road in a rash and negligent manner, turned the Bus to the extreme left side of the road and stopped the Bus. The rider of the Two wheeler due to his rash and negligent riding, unable to control the speed, dashed against the front side of the stationed Bus and caused the accident. To prove their case, the appellant examined driver of the Bus as R.W.1. From the materials on record, it is seen that FIR was registered against the driver of the Bus. The driver of the Bus or the appellant did not lodge any complaint against the deceased or file any objection to the FIR being registered against the driver of the Bus. The appellant has not examined any independent eye witness in support of their case. The Tribunal considering the evidence of P.W.2 and FIR, 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 51 years, working as



a Mason and was earning a sum of Rs.30,000/- per month. They failed to prove the same. In the absence of any materials, the Tribunal fixed a sum of Rs.10,000/- per month as notional income. The accident is of the year 2016. The notional income of Rs.10,000/- per month fixed by the Tribunal is not excessive. The Tribunal fixed age of the deceased at 51 years, based on post mortem certificate, granted 10% enhancement towards future prospects, applied multiplier '11' and granted compensation towards loss of dependency, apart from awarding a sum of Rs.70,000/- under conventional heads. The quantum of 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.11,59,000/- 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, 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.1113 of 2016. On such deposit, the respondents are permitted to withdraw their 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. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

gsa
To

1. The Sessions Judge, Mahil Court
(Motor Accident Claims Tribunal),
Perambalur.
2. The Section Officer,
V.R Section,
High Court, Madras.

+1cc to M/s.D.Raghu, Advocate, S.R.No.74

C.M.A. No.1953 of 2020

RG(CO)
CT(30/09/2021)