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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.01.2021

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

AND

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

C.M.A.NO.1973 OF 2020

AND

C.M.P.NO.14554 OF 2020

The Managing Director,
Tamil Nadu State Transport Corporation,
Ramakrishna Road,
Salem - 7.

... Appellant/
1st Respondent

vs

1.Sathya
W/o.Late Kandasamy

2.Minor K.Gurudeep
S/o.Late Kandasamy

3.Sellappan
S/o.Raja Goundar

4.Palaniammal
W/o.Sellappan

... Respondents 1 to 4/
Petitioner

5.J.Senthil
S/o.Jayalrakasham

6.M/s.United India Insurance Company Ltd.,
represented by its
Branch Manager,
Micro Office, 1st Floor,
MR Complex, IOB Upstairs,
Nallipalayam Road,
Jambai - 638 312.

... Respondents 5 to 6/
Respondents 2 to 3



Prayer: Civil Miscellaneous Appeal filed u/s.173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 07.01.2020 passed in M.C.O.P.No.383 of 2016 on the file of Motor Accident Claims Tribunal/Special District Court, Krishnagiri.

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For Appellant : Mr.D.Raghu

For Respondents: Mr.S.P.Yuvaraj [R1 to R4]

JUDGMENT

[Judgment of the Court was delivered by R.SUBBIAH, J]

This matter is heard through Video Conference.

2. By consent, the appeal is taken up for final disposal at the stage of admission itself.

3. This appeal has been filed by appellant transport corporation against the judgment and decree dated 07.01.2020 passed in M.C.O.P.No.383 of 2016 on the file of Motor Accident Claims Tribunal/Special District Court, Krishnagiri.

4. For the sake of convenience, the appellant is referred to as the Transport Corporation and the respondents 1 to 4 are referred to as claimants.

5. It is the case of the respondents 1 to 4/claimants before the Tribunal that they are the wife, minor son and father and mother of the deceased Kandasamy. The deceased was working as Conductor in the appellant-Transport Corporation. On 19.02.2016, while the deceased was on duty as Conductor in the bus bearing Registration No.TN-29-N-2309, which was proceeding to Bangalore with passengers, and the said bus was driven by its driver in a rash and negligent manner without following the Traffic Rules, at that time, a lorry bearing Registration No.KA-01-AB-2599 belonging to the fifth respondent herein and insured with the sixth respondent herein, was proceeding in front of the bus. While so, at about 4.00 hours, the driver of the lorry suddenly moved the said lorry towards the right side of the road without giving any signal to the vehicle coming behind and in the said process, the driver of the bus who did not anticipate the same, applied sudden brake. In spite of the efforts taken by the driver of the bus to avoid the hitting of the lorry, the bus dashed against the rear side of the lorry, resulting in the accident, in which some of the occupants in the bus had sustained fatal injuries, one among whom is the deceased. It is the further case of the claimants that the deceased was earning a sum of Rs.20,776/- per month. Hence, the claimants have made a claim seeking compensation in a sum of Rs.50 lakhs for the death of the said Kandasamy, as against the owner of the lorry and its insurer, being the fifth and sixth respondents herein.



6. The claim was resisted by transport corporation by filing a detailed counter stating that the accident had occurred only due to the rash and negligent driving of the lorry belonging to fifth respondent. The driver of the bus, belonging to transport corporation, was no way responsible for the accident. However, a false case has been registered against the driver of the bus. Hence, the transport corporation prayed for dismissal of the claim petition.

7. The sixth respondent insurance company has also filed a counter stating that at the time of accident, the lorry was driven by its driver at a normal speed by observing all the rules. While the lorry was proceeding near Dhakshan Thirupathi Kovil, the bus belonging to transport corporation came in a rash and negligent manner without observing any rule and hit the rear side of the Lorry. Hence, the accident had occurred due to the rash and negligent driving of the bus belonging to transport corporation. Since the driver of the lorry was no way responsible for the accident, the sixth respondent insurance company prayed for dismissal of the claim petition as against them.

8. To prove the claim, on the side of claimants, 2 witnesses were examined and 22 documents were marked. On the side of transport corporation, none were examined and no exhibits were marked. One witness was examined as RW-1 on the side of sixth respondent insurance company.

9. On appreciation of materials on record, the Tribunal found that the accident had occurred owing to the rash and negligent driving of the bus belonging to transport corporation and held that the transport corporation was liable to pay compensation. The Tribunal further found that respondents 5 and 6 are not liable to pay compensation and dismissed the claim petition as against them. The compensation awarded by the Tribunal is as follows:

Sl. No.	Compensation awarded under the head	Amount (in Rs.)
1.	Loss of dependency	34,03,176/-
2.	Love and Affection	30,000/-
3.	Loss of consortium	25,000/-
4.	Loss of Estate	20,000/-
5.	Funeral expenses	15,000/-
	Total	34,93,176/-

The said sum was directed to be paid together with interest at 7.5% p.a. from the date of petition till the date of



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realization. Now, questioning the finding rendered by the Tribunal in fixing the entire liability on the part of the driver of the transport corporation bus as well as the quantum of compensation, the transport corporation has filed the present appeal.

10. Learned counsel for transport corporation submits that on the date of accident, while the bus, belonging to transport corporation, was proceeding towards Bengaluru, the lorry belonging to fifth respondent, which was proceeding in front of the bus suddenly moved towards right without giving any signal to the vehicle coming behind as a result of which the bus hit the rear side of the lorry. Since the accident had occurred only due to the rash and negligent driving of the lorry, the Tribunal ought to have fixed entire negligence on the part of the driver of the lorry and exonerated the transport corporation from paying the compensation. Submitting as above, learned counsel prayed this Court to set aside the award passed by the Tribunal as against the Transport Corporation. The alternate submission of learned counsel for transport corporation is that in the event of this Court coming to the conclusion that the bus belonging to transport corporation was also a cause for the accident, this Court may fix 50% contributory negligence on both the vehicles.

11. With regard to the aspect of quantum of compensation is concerned, it is submitted by learned counsel for transport corporation that the tribunal had fixed the monthly income of the deceased as Rs.20,776/-, which appears to be on the higher side. Hence, by fixing a notional sum of Rs.15,000/-, the amount awarded by the Tribunal has to be reduced.

12. Per contra, learned counsel for claimants submits that in order to prove the rash and negligence on the part of the driver of the lorry, the transport corporation had neither examined any witness nor marked any document. The First Information Report in the case was registered only as against driver of the bus belonging to transport corporation. In such circumstance, the finding of the Tribunal that the accident had occurred owing to the rash and negligent driving of the bus, cannot be found fault with. Submitting as above, learned counsel prays this Court to confirm the finding rendered by the Tribunal in fixing the entire liability on the transport corporation.

13. As regards the quantum of compensation is concerned, learned counsel submits that the Tribunal has fixed a sum of Rs.20,776/- as the monthly income of the deceased based on the salary certificate issued by transport corporation in which the deceased was working as a conductor. Therefore, absolutely there is no error in the award passed by the Tribunal. Submitting as



(SC) = 2020 (2) MWN (Civil) 827 (United India Insurance Company Limited and others Vs. Satinder Kaur @ Satwinder Kaur and others), the respondents 2 to 4, being the minor son and parents of the deceased Kandasamy, are entitled to Rs.40,000/- each, towards parental consortium and filial consortium respectively.

19. But, in the absence of any appeal having been filed by the respondents 1 to 4, this Court is unable to award the said sum of Rs.40,000/- to the respondents 1 to 4 under the above said heads. Therefore, left with no other alternative, this Court confirms the award passed by the Tribunal.

In the result, the Civil Miscellaneous Appeal fails and accordingly, it is dismissed. The award passed by the Tribunal is hereby confirmed. The Transport Corporation is directed to deposit the compensation of Rs.34,93,176/- (Rupees Thirty Four Lakhs Ninety Three Thousand One Hundred and Seventy Six only), less the amount already deposited, together with interest at 7.5% p.a. from the date of petition till the date of deposit within a period of four weeks from the date of receipt of this judgment. On such deposit being made by Transport Corporation, the claimants 1, 3 and 4 (respondents 1, 3 and 4 herein) are permitted to withdraw their respective shares, as apportioned by Tribunal, along with accrued/proportionate interest and costs, less the amount, if any already withdrawn by them, by filing necessary application before the Tribunal. The share of second respondent/minor son of deceased shall be deposited in a fixed deposit in any nationalised bank till he attains majority. First respondent/mother of the minor is entitled to withdraw interest thereon once in three months towards taking care of the minor claimant. No costs. Connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VII)

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Sub Assistant Registrar

gm
To
The Motor Accident Claims Tribunal,
Special District Court,
Krishnagiri.

+lcc to Mr.D.Ragu, Advocate, S.R.No.589
+lcc to Mr.S.P.Yuvaraj, Advocate, S.R.No.619

C.M.A.No.1973 of 2020

CNR(CO)
PM/15/09/2021