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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.01.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.NO.1952 OF 2020

AND

C.M.P.NO.14443 OF 2020

The Managing Director,
M/s.Tamilnadu State Transport
Corporation (Salem) Limited,
12-Ramakrishna Road,
Hasthampatty,
Salem.

.. Appellant/Respondent

Vs.

1.Vijayalakshmi

2.Minor Akash

3.Minor Lakeeshwaran

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

.. Respondents 1 to 3/
Claimants

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 12.03.2020, made in M.C.O.P. No.517 of 2019, on the file of the Special District Court, (Motor Accident Claims Tribunal), Krishnagiri.

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 12.03.2020, made in M.C.O.P.No.517 of 2019, on the file of the Special District Court, (Motor Accident Claims Tribunal), Krishnagiri.



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2.The appellant is the respondent in M.C.O.P.No.517 of 2019, on the file of the Special District Court, (Motor Accident Claims Tribunal), Krishnagiri. The respondents/ claimants filed the said claim petition, claiming a sum of Rs.35,00,000/- as compensation for the death of one Krishnan, who died in the accident that took place on 01.12.2017.

3.According to the respondents, on the date of accident, when the deceased was riding his Two wheeler bearing Registration No.TN-70-H-9545 in Hosur to Denkanikottai Road, near Ramanaikan Eri Munieswaran Temple, the driver of the Bus bearing Registration No.TN-29-N-1877 belonging to the appellant-Transport Corporation drove the same in a rash and negligent manner and dashed on the Two wheeler driven by the deceased in the opposite direction 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, it was raining and the driver of the said Bus bearing Registration No.TN-29-N-1877 drove the same very slowly, carefully, cautiously, observing all the rules of the road with sounding horn. When the Bus was near Ramanaikan Eri, Munieswaran Temple, the deceased who was riding his Two wheeler in a rash and negligent manner at uncontrollable speed, speaking on mobile phone, lost control and came from opposite side of the road, i.e., from right side of the road and dashed against the front 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 herself as P.W.1, eye witness viz., Srinivasan was examined as P.W.2 and 11 documents were marked as Exs.P1 to P11. The appellant examined the driver of the Bus involved in the accident as R.W.1, Junior Assistant from RTO Office, Hosur as R.W.2 and marked 2 documents as Exs.R1 & R2.

6.The Tribunal considering the pleadings, oral and documentary evidence, held that accident occurred due to negligence of both the driver of the Bus belonging to the appellant-Transport Corporation as well as deceased/rider of the



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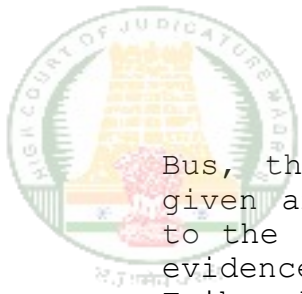
Two wheeler and fixed contributory negligence as 85:15 and awarded a sum of Rs.16,07,000/- as compensation to the respondents. The Tribunal directed the appellant to pay a sum of Rs.13,65,950/-, being 85% of the award amount as compensation to the respondents.

7. Against the said award dated 12.03.2020, made in M.C.O.P. No.517 of 2019, 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 the deceased who drove the Two wheeler in a rash and negligent manner without sounding horn, speaking on mobile phone, came from opposite side of the road, i.e., from right side of the road and dashed on the front side of the Bus and caused the accident. The appellant examined driver of the Bus and proved the same. The Tribunal erroneously fixed negligence on the driver of the Bus and directed the appellant to pay compensation to the respondents. The respondents failed to prove the avocation and income of the deceased. In the absence of any materials, the Tribunal erroneously fixed Rs.9,000/- 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 while the deceased was riding the Two wheeler, the driver of the Bus belonging to the appellant Transport Corporation drove the same in a rash and negligent manner, dashed against the Two wheeler in which the deceased was riding and caused the accident. In the accident, the deceased sustained fatal injuries and died. To substantiate their contention, the 1st respondent examined herself as P.W.1 and one Srinivasan was examined as P.W.2 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 deceased only caused accident. He was riding his Two wheeler in a rash and negligent manner without sounding horn, speaking over mobile phone and came to wrong side and dashed on the front side of the Bus. In support of their case, the appellant examined driver of the Bus as R.W.1 and examined Junior Assistant from R.T.O., Hosur as R.W.2, to show that deceased did not possess driving license at the time of accident. The Tribunal taking into consideration the FIR registered against R.W.1, driver of the



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Bus, 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, accepted the evidence of P.W.2 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. At the same time, the Tribunal considered the evidence of P.W.1 who admitted that her deceased husband did not wear helmet, did not possess driving license and vehicular documents and held that deceased also contributed to the accident and directed the appellant to pay only 85% of the amounts awarded. 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 39 years, working as a Carpenter and was earning a sum of Rs.25,000/- per month. They failed to prove the same. In the absence of any materials, the Tribunal fixed a sum of Rs.9,000/- per month as notional income of the deceased, granted 40% enhancement towards future prospects, applied multiplier '15', deducted 1/3rd towards personal expenses of the deceased and awarded compensation towards loss of dependency. The accident is of the year 2017. The notional income of Rs.9,000/- per month fixed by the Tribunal is not excessive. The Tribunal granted a sum of Rs.20,000/- towards loss of estate, Rs.30,000/- each towards loss of consortium and loss of love and affection. In view of the lesser amount granted by the Tribunal towards loss of love and affection and loss of consortium, the excess amount granted by the Tribunal towards loss of estate is not interfered with.

12.In the result, this Civil Miscellaneous Appeal is dismissed and the amount awarded by the Tribunal at Rs.16,07,000/- 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 Rs.13,65,950/- being 85% of 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.517 of 2019. On such deposit, the 1st respondent is permitted to withdraw her 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 2 and 3 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 2 and 3 is permitted to withdraw the accrued interest, once in three months



for the welfare of the minor respondents 2 and 3. Consequently, connected Miscellaneous Petition is closed. No costs.

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Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

gsa

To

1. The Special District Judge,
(Motor Accident Claims Tribunal),
Krishnagiri.

+1cc to M/s.D.Raghu, Advocate, S.R.No.77

C.M.A.No.1952 of 2020

CNR(CO)
CS/03/09/2021