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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.02.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.4805 of 2019

and

C.M.P.No.846 of 2020

1.Gomathi

2.Minor. Abishek

3.Minor. Sabari

.. Appellants/ Petitioners

(Minor appellants 2 and 3 are represented
by their mother and natural guardian,
Gomathi 1st appellant herein)

Vs.

1.Umashankar

2.The Managing Director,
Tamil Nadu State Transport Corporation,
(Coimbatore) Limited,
Chennimalai Road,
Erode.

.. Respondents/ Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 31.07.2019 made in M.C.O.P.No.81 of 2016 on the file of the Motor Accident Claims Tribunal, Special District Court, Erode.

For Appellants : Mr.S.Kaithamalai Kumaran

For R1 : No appearance

For R2 : Mr.K.J.Sivakumar



J U D G M E N T

The matter is heard through "Video Conferencing".

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2.This Civil Miscellaneous Appeal has been filed against the award dated 31.07.2019 made in M.C.O.P.No.81 of 2016 on the file of the Motor Accident Claims Tribunal, Special District Court, Erode.

3.The appellants are the claimants in M.C.O.P.No.81 of 2016 on the file of the Motor Accident Claims Tribunal, Special District Court, Erode. They filed the above said claim petition, claiming a sum of Rs.20,00,000/- as compensation for the death of one Eswaranmoorthy, who died in the accident that took place on 28.10.2015.

4.According to the appellants, on 28.10.2015 at about 02.45 P.M., while the deceased Eswaranmoorthy was driving the Skoda car bearing Registration No.TN 56 P 3737 from North to South direction on the Erode - Chennimalai Road, near Rangampalayam Joseph Hospital, the driver of the bus bearing Registration No.TN 33 N 2277 belonging to 2nd respondent who was driving the bus on the Chennimalai - Erode road from South to North direction, drove the bus in a rash and negligent manner and dashed against the car driven by the said Eswaranmoorthy and caused the accident. In the accident, the said Eswaranmoorthy sustained fatal injuries and died on the spot. Therefore, the appellants filed the said claim petition claiming a sum of Rs.20,00,000/- as compensation against the respondents.

5.The 2nd respondent filed counter statement denying all the averments made by the appellants and the same was adopted by the 1st respondent. According to the respondents, the appellants have to prove that the driver of the car, the deceased was possessing valid driving license and also the car was having valid insurance policy, permit and Registration Certificate at the time of accident. The claim petition filed by the appellants has to be dismissed on the ground that the insurer of the car was not impleaded as necessary party in the claim petition. According to the respondents, at the time of accident the 1st respondent was driving the bus slowly on the Chennimalai - Erode road by sounding horn and following the road traffic rules. While nearing a curve at Chandrasekaran Wedding Hall, Rangampalayam, the driver of the bus reduced the speed of the bus as he was about to stop the bus at Joseph Hospital bus stop, which was about 20 feet distance and also due to light rain. At that time, the said Eswaranmoorthy drove the car from the opposite direction at a high speed and dashed on the right side bumper of the bus and invited the accident. The Police



Inspector, Taluk Police Station, Erode in his final report has mentioned that the accident has occurred due to rash and negligent driving by the deceased and the appellants have given the complaint contrary to the facts. He has stated that there was mistake in the case and he prepared the final report as per R.C.S.No.19 of 2015 for submitting the final report in the Court. The F.I.R. was registered against the driver of the bus only based on a false complaint. Hence, the respondents are not liable to pay any compensation to the appellants. F.I.R. was registered against the driver of the bus based on a false complaint only with an intention to get money from the 2nd respondent. The claim petition has to be dismissed as the deceased was not possessing valid driving license at the time of accident and also the car driven by the deceased was not having valid insurance and Registration Certificate. The respondents denied the age, avocation and income of the deceased. The appellants have to produce the Income Tax particulars of the deceased for the past three years to prove the income of the deceased. In any event, the quantum of compensation claimed by the appellants is highly excessive and prayed for dismissal of the claim petition.

6.Before the Tribunal, the 1st appellant examined herself as P.W.1, one Seenivasan, complainant to the accident was examined as P.W.2 and one G.Gunasekaran, eyewitness to the accident was examined as P.W.3 and 14 documents were marked as Exs.A1 to A14. On behalf of the respondents, the 1st respondent was examined as R.W.1 and no document was marked.

7.The Tribunal considering the pleadings, oral and documentary evidence, held both the deceased as well as the 1st respondent-driver of the bus are equally responsible for the accident, fixed negligence equally in the ratio 50% each, awarded a sum of Rs.18,61,936/- as compensation to the appellants and directed the 2nd respondent to pay a sum of Rs.9,30,968/- being 50% of the award amount as compensation to the appellants.

8.Questioning the portion of the award fixing 50% contributory negligence on the part of the deceased as well for enhancement of compensation in the award dated 31.07.2019 made in M.C.O.P.No.81 of 2016, the appellants have come out with the present appeal.

9.The learned counsel appearing for the appellants contended that the Tribunal without considering Ex.A1/F.I.R., A2/Rough Sketch, A3/Observation Mahazar, erroneously fixed 50% contributory negligence on the part of the deceased. The appellants examined P.W.2, who lodged the complaint immediately after the accident and P.W.3/eyewitness. Without any reason, the



Tribunal brushed aside their evidence when there is no contra evidence. There was a curve in the place of occurrence and the vehicle coming in the opposite direction ought to have been careful while negotiating the curve. The 1st respondent-driver of the bus ought to have taken utmost care while negotiating the curve. The Tribunal erred in holding that deceased was wrong in negotiating the curve without considering the place of occurrence in Ex.A2/Rough Sketch. The Motor Vehicles Act is a benevolent legislation enacted for the welfare of the victims of the road accident. The reason given by the Tribunal for fixing 50% contributory negligence on the part of the deceased and granted lesser amount of Rs.9,30,968/- as compensation is perse illegal. The Tribunal granted lesser amount without considering the age, occupation and earning capacity of the deceased and prayed for setting aside the portion of the award fixing 50% contributory negligence on the part of the deceased and for enhancement of compensation.

10.Though notice has been served on the 1st respondent and his name is printed in the cause list, there is no representation for him, either in person or through counsel.

11.Per contra, Mr.K.J.Sivakumar, learned counsel appearing for the 2nd respondent contended that the accident occurred only due to the negligent driving by the deceased as he has crossed the center median and came to the right hand side of the road. The Tribunal having held that deceased was not driving the car in the left hand side of the road as alleged by the appellants and accident has occurred in the right hand side of the deceased, ought to have fixed entire negligence on the part of the deceased and exonerated the 2nd respondent-Transport Corporation from its liability. In any event, the appellants have not proved that Business done by the deceased was closed and they are not getting any income from the same Business. In the absence of acceptable evidence, the Tribunal rightly fixed a sum of Rs.10,000/- per month as notional income of the deceased and granted compensation. The total compensation awarded by the Tribunal is not meagre and prayed for dismissal of the appeal.

12.Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the 2nd respondent-Transport Corporation and perused the entire materials available on record.

13.It is the case of the appellants that while the deceased was driving the car on the left hand side of the road, the 1st respondent-driver of the bus drove the bus in a rash and negligent manner, dashed on the car and caused the accident. Due to the injuries sustained by him, the driver of the car died. To substantiate their case, the 1st appellant examined herself as



P.W.1 and examined P.W.2, who lodged the complaint and P.W.3/eyewitness to the accident. They marked Ex.A1/F.I.R., which was registered against the driver of the bus. On the other hand, it is the case of the respondents that deceased drove the car in a rash and negligent manner and came to the right hand side of the road crossing the center median and dashed on the front bumper of the bus and caused the accident. To substantiate their case, the driver of the bus was examined as R.W.1 and no document was marked. The Tribunal considering Ex.A2/Rough Sketch and place of occurrence, held that contention of the appellants that deceased was driving the car on the left hand side of the road is not correct. P.W.1 in her cross examination admitted that Police closed the case as mistake of fact and notice was also given to P.W.2/complainant. The Tribunal considering Ex.A2/Rough Sketch, found that there was a curve just before the place of occurrence and both the drivers ought to have been careful while negotiating the curve and fixed negligence equally on both the drivers. The Tribunal has given valid reason for fixing the negligence and there is no error in the said finding of the Tribunal.

14.As far as quantum of compensation is concerned, it is the case of the appellants that the deceased was running a Business in the name and style of "Sree Maha Ganapathi Traders" and was earning a sum of Rs.30,000/- per month. They filed Exs.A9 to A11-Income Tax Returns for the year 2012 - 2013, 2013 - 2014 and 2014 - 2015. The Tribunal considering the Income Tax Returns, held that deceased has declared his income as Rs.2,35,920/- in Ex.A11/Income Tax Returns filed for the year 2014 - 2015, fixed the monthly income as Rs.20,000/- per month. The Tribunal considering the facts that appellants failed to prove that the Business run by the deceased was closed and entire income was lost by the appellants, fixed a sum of Rs.10,000/- per month as notional income of the deceased and granted compensation for loss of dependency. The accident occurred in the year 2015 and a sum of Rs.10,000/- per month fixed by the Tribunal as notional income of the deceased is meagre. Considering the year of accident, a sum of Rs.14,000/- per month is fixed as notional income of the deceased. The deceased was aged 33 years at the time of accident and 40% enhancement granted by the Tribunal towards future prospects of the deceased, multiplier '16' adopted and $\frac{1}{3}^{\text{rd}}$ deduction made by the Tribunal towards personal expenses of the deceased are proper. Thus, the compensation granted by the Tribunal towards loss of dependency is modified to Rs.25,08,800/- {Rs.19,600/- [Rs.14,000/- + Rs.5,600/- (40% of Rs.14,000/-)] X 12 X 16 X $\frac{2}{3}$ }. The Tribunal has not awarded any amount towards loss of love and affection to appellants 2 and 3. The appellants 2 and 3 are entitled to a sum of Rs.40,000/- towards loss of love and affection. The amounts awarded by the Tribunal under other heads



are just and reasonable and hence, the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependency	17,91,936/-	25,08,800/-	Enhanced
2.	Loss of love and affection to appellants 2 & 3	-	40,000/-	Granted
3.	Loss of consortium to 1 st appellant	40,000/-	40,000/-	Confirmed
4.	Funeral expenses	15,000/-	15,000/-	Confirmed
5.	Loss of estate	15,000/-	15,000/-	Confirmed
	Total	Rs.18,61,936/-	Rs.26,18,800/-	Enhanced by Rs.3,78,432/-
	50% of compensation	Rs.9,30,968/-	Rs.13,09,400/-	(Rs.13,09,400/- - Rs.9,30,968/-)

15. In the result, this Civil Miscellaneous Appeal is partly allowed and the total compensation awarded by the Tribunal at Rs.18,61,936/- is hereby enhanced to Rs.26,18,800/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2nd respondent-Transport Corporation is directed to deposit 50% of the award amount now determined by this Court (i.e., Rs.13,09,400/-) along with proportionate interest and costs, less the amount if any 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.81 of 2016 on the file of the Motor Accident Claims Tribunal, Special District Court, Erode. On such deposit, the 1st appellant is permitted to withdraw her respective share of the award amount now determined by this Court as per the ratio of apportionment fixed by the Tribunal along with proportionate interest and costs, less the amount if any already withdrawn by making necessary applications before the Tribunal. The share of the minor appellants 2 and 3 are directed to be deposited in any one of the Nationalized Banks, till the minor appellants 2 and 3 attain majority. On such deposit, the 1st appellant, being the mother of the minor



appellants 2 and 3 is permitted to withdraw the accrued interest once in three months for the welfare of the minor appellants 2 and 3. Consequently, the connected Miscellaneous Petition is closed. No costs.

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Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

krk
To

1.The Motor Accident Claims Tribunal,
Special District Judge,
Erode.

2.The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mr.K.J.Sivakumar, Advocate SR.No. 7124

+1cc to Mr.S.Kaithamalai Kumaran, Advocate SR.No. 6831

C.M.A.No.4805 of 2019

(CO)

A.SK(23.09.2021)