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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.01.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.NO.3089 OF 2014
AND M.P.NO.1 OF 2014

The Managing Director
Tamil Nadu State Transport
Corporation Limited
Coimbatore Division Office
No.37, Mettupalayam road
Coimbatore.

.. Appellant/
2nd Respondent

Vs.

1.Ilavarasi
2.Ramkumar
3.Anandhakumar
4.Selvaraj

... Respondents 1 to 3 / Petitioners

.. 4th Respondent/
1st Respondent

Prayer:

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 30.04.2013 made in M.C.O.P.No.725 of 2011 on the file of the Motor Accident Claims Tribunal, II Additional District Court, Erode.

For Appellant : Mr.Arun
for Mr.A.Sundaravathanan
For R1 and R3 : Mr.C.Ramaraj
for Mr.M.Guruprasad



J U D G M E N T

(This matter is heard through "Video-Conferencing")

The Civil Miscellaneous Appeal is filed against the award dated 30.04.2013 made in M.C.O.P.No.725 of 2011 on the file of the Motor Accident Claims Tribunal, II Additional District Court, Erode.

2.The appellant is 2nd respondent in M.C.O.P.No.725 of 2011 on the file of the Motor Accident Claims Tribunal, II Additional District Court, Erode. The respondents 1 to 3 filed the said claim petition claiming a sum of Rs.10,00,000/- as compensation for the death of one Jayapaul, husband of the 1st respondent and father of the respondents 2 and 3, who died in the accident that took place on 13.11.2009.

3.According to the respondents 1 to 3, on the date of accident, i.e., on 13.11.2009 at about 8.45 p.m., while the said Jayapaul was riding his motorcycle along with one Subramani in the pillion from Palayapalayam, Thanneerpandalpalayam, on Erode-Perundurai main road, near Nandhini Punjabi hotel, the 4th respondent, driver of the bus belonging to the appellant/Transport Corporation drove the same in a rash and negligent manner, dashed on the back side of the motorcycle and caused the accident. In the accident, the said Jayapaul sustained fatal injuries and died in the hospital on 14.11.2009. Therefore, the respondents 1 to 3 filed the above claim petition claiming compensation as against the 4th respondent, the driver of the bus and the appellant/Transport Corporation.

4.The 4th respondent, the driver of the bus, remained exparte before the Tribunal.

5.The appellant/Transport Corporation filed counter statement denying the averments made in the claim petition and stated that while the driver of the bus was driving the same on the left side of the road in a careful manner, the deceased alone rode the motorcycle on the right side of the road in front of the bus, in a rash and negligent manner and suddenly crossed the main road from right side to left side, without giving any signal. On seeing this, the 4th respondent, the driver of the bus has blown the horn, slow down the bus, applied brake, turned the bus on the left side of the road and suddenly stopped the bus. Even though the deceased Jayapaul turned the motorcycle to the right side of the road, he lost his balance, hit on the front



right side of the bus, fell down and invited the accident. The driver of the bus was not responsible for the accident. The accident has occurred solely due to rash and negligent riding of the motorcycle by the deceased. The respondents 1 to 3 failed to implead the insurer of the motorcycle as party to the claim petition. Hence, the claim petition is hit by non-joinder of necessary party. At the time of accident, the deceased did not wear helmet and therefore, he has also contributed to the accident. Hence, the appellant/Transport Corporation is not liable to pay any compensation to the respondents 1 to 3. The appellant has also denied the age, avocation and income of the deceased. In any event, the compensation claimed by the respondents 1 to 3 is excessive and prayed for dismissal of the claim petition.

6. Before the Tribunal, the 1st respondent, wife of the deceased, examined herself as P.W.1, one Subramani, an eye-witness and pillion rider of the motorcycle at the time of accident, was examined as P.W.2 and ten documents were marked as Exs.P1 to P10. The appellant/Transport Corporation examined the driver of the bus, the 4th respondent herein as R.W.1 and did not file any documentary evidence.

7. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the 4th respondent, the driver of the bus belonging to the appellant/Transport Corporation and directed the appellant to pay a sum of Rs.5,23,000/- as compensation to the respondents 1 to 3.

8. Against the said award dated 30.04.2013 made in M.C.O.P.No.725 of 2011, the appellant/Transport Corporation has come out with the present appeal.

9. The learned counsel appearing for the appellant/Transport Corporation contended that while the driver of the bus was proceeding in a moderate speed, the deceased Jayapaul, who was riding the motorcycle along with pillion rider, suddenly crossed the road without noticing oncoming vehicle, hit against the front side of the bus, fell down and sustained fatal injuries. The deceased alone is responsible for the accident. To substantiate their case, the appellant examined the driver of the bus as R.W.1. The Tribunal without considering the same, erred in holding that the accident has occurred only due to rash and negligent driving by the driver of the bus. The deceased was aged 54 years at the time of accident. The Tribunal erred in



applying multiplier '12' instead of multiplier '11'. The amounts awarded by the Tribunal under different heads are excessive and prayed for setting aside the award of the Tribunal.

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10. The learned counsel appearing for the respondents 1 and 3 made his submissions in support of the award passed by the Tribunal and prayed for dismissal of the appeal.

11. The 4th respondent remained ex parte before the Tribunal and hence, notice to the 4th respondent is dispensed with.

12. Heard the learned counsel appearing for the appellant/Transport Corporation as well as the learned counsel appearing for the respondents 1 and 3 and perused the entire materials on record.

13. From the materials on record, it is seen that the respondents 1 to 3 have contended that while the said Jayapaul was riding the motorcycle along with one Subramani, as a pillion rider, the 4th respondent, driver of the bus belonging to the appellant/Transport Corporation drove the same in a rash and negligent manner and caused the accident. In the said accident, the said Jayapaul sustained fatal injuries. The accident has occurred only due to rash and negligent driving by the driver of the bus. On the other hand, it is the case of the appellant/Transport Corporation that the accident has occurred only due to rash and negligent riding of the motorcycle by the said Jayapaul, who rode the motorcycle without noticing on coming vehicle, suddenly turned the motorcycle from right side to left side without any signal and hit against the front side of the bus. On seeing Jayapaul turning from right to left side, the 4th respondent slow down the bus, blew horn and stopped the bus. In spite of the same, the said Jayapaul lost balance, dashed on the bus, fell down and invited the accident. To substantiate their case, the 1st respondent has examined herself as P.W.1. She is not an eye-witness to the accident. She deposed as that of the averments made in the claim petition. The respondents 1 to 3 examined pillion rider of the motorcycle viz., Subramani as P.W.2, who deposed that while the deceased and P.W.2 were coming in the motorcycle slowly, the 4th respondent drove the bus in a rash and negligent manner, dashed on the back side of the motorcycle and caused the accident. The respondents 1 to 3 filed and marked F.I.R., which was registered against the 4th respondent, driver of the bus as Ex.P1. The appellant examined 4th respondent, driver of the bus as R.W.1, who deposed as stated in the counter statement. The 4th



respondent further deposed that F.I.R. was registered after one day of the accident and he was acquitted in the criminal case. The 4th respondent did not produce the judgment of the criminal Court acquitting him. Further he has not given any complaint against the deceased Jayapaul, the rider of the motorcycle. The appellant did not examine any independent witness. In the absence of any other eye witness, the Tribunal considering the evidence of P.W.2 and F.I.R., held that the accident has occurred only due to rash and negligent driving by the 4th respondent, driver of the bus. There is no error in the said finding of the Tribunal warranting interference by this Court.

14. As far as quantum of compensation awarded by the Tribunal is concerned, the respondents 1 to 3 contended that at the time of accident, the deceased was a bleaching contractor and was earning a sum of Rs.25,000/- per month. They did not file any document to prove the same. In the absence of evidence with regard to income of the deceased, the Tribunal fixed a sum of Rs.4,500/- per month as notional income of the deceased. The accident has occurred on 13.11.2009. The monthly income fixed by the Tribunal is meagre. There are three claimants and the Tribunal deducted 1/3rd towards personal expenses of the deceased. As per Ex.P8/Transfer Certificate, the Tribunal fixed age of the deceased as 54 years and applied multiplier '12'. As per the judgment of the Hon'ble Apex Court reported in 2009 (2) TNMAC 1 SC Supreme Court (Sarla Verma vs. Delhi Transport Corporation), the correct multiplier applicable is '11'. The Tribunal has not granted any enhancement towards future prospects. The amounts granted under conventional heads are meagre. In view of the meagre sum fixed as monthly income, failure to grant enhancement towards future prospects and meagre amounts granted by the Tribunal under conventional heads, the multiplier '12' applied by the Tribunal instead of multiplier '11' is not interfered with. The total compensation awarded by the Tribunal is not excessive warranting interference by this Court.

15. In the result, this Civil Miscellaneous Appeal is dismissed and the sum of Rs.5,23,000/- awarded by the Tribunal as compensation to the respondents 1 to 3 along with interest and costs is confirmed. The appellant/Transport Corporation is directed to deposit the entire amount awarded by the Tribunal along with interest and costs, less the amount already deposited, if any, within a period of twelve weeks from the date of receipt of a copy of this judgment. On such deposit, the respondents 1 to 3 are permitted to withdraw their respective share of the award amount, on the basis of apportionment fixed by the Tribunal, along with proportionate interest and costs,



less the amount if any, already withdrawn. Consequently, connected Miscellaneous Petition is closed. No costs.

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Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. II Additional District Judge
Motor Accident Claims Tribunal
Erode.
2. The Section Officer
V.R.Section
High Court, Chennai.

+1cc to Mr.M.Guruprasad, Advocate, S.R.No.3173
+1cc to Mr.A.Sundaravathanan, Advocate, S.R.No.3442

C.M.A.No.3089 of 2014
and M.P.No.1 of 2014

GP(CO)
PM/11/04/2022