



C.M.A.No.1737 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.09.2022

CORAM:

THE HONOURABLE **MS.JUSTICE V.M.VELUMANI**
and
THE HONOURABLE **MRS.JUSTICE T.V.THAMILSELVI**

C.M.A. No.1737 of 2021
and C.M.P.No.9139 of 2021

The Managing Director,
Andhra Pradesh State Road Transport Corporation Limited,
Musheerabad, Hyderabad,
Andhra Pradesh.

.. Appellant

Vs.

1.Manjula

2.Minor A.Dhanush

3.Minor A.Madhan

4.Minor A.Ranjith

(Minors 2 to 4 rep. by their next friend/guardian mother R1)

5.Nagamma

6.Mahendiran

.. Respondents



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Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgment and decree dated 17.09.2019, made in M.C.O.P. No.537 of 2018, on the file of the Special District Court, (Motor Accident Claims Tribunal), Krishnagiri.

For Appellant : Mrs.G.V.Shoba

For Respondents : Ms.R.Poornima

J U D G M E N T

[Judgment of the Court was delivered by V.M.VELUMANI,J.]

This Civil Miscellaneous Appeal has been filed by the appellant-Transport Corporation to set aside the judgment and decree dated 17.09.2019, made in M.C.O.P. No.537 of 2018, on the file of the Special District Court, (Motor Accident Claims Tribunal), Krishnagiri.

2.The appellant is the respondent in M.C.O.P. No.537 of 2018, on the file of the Special District Court, (Motor Accident Claims Tribunal), Krishnagiri. The respondents/claimants filed the said claim petition, claiming a



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sum of Rs.25,00,000/- as compensation for the death of one Anbalagan who died in the accident that took place on 25.07.2016.

3. According to the respondents, on the date of accident, after attending some personal work, the deceased Anbalagan was returning to his house in a Motorcycle bearing Registration No.AP-03-BG-0387 slowly and cautiously in the left side of the road. At about 11.45 hours, while riding near a Well at Sivanandapuram Village on Kuppam to Tirupattur road, the driver of the Bus bearing Registration No.AP-21-Z-0346 owned by the appellant-Transport Corporation, who was coming in the opposite direction towards Tirupattur in a rash and negligent manner, lost control and dashed against the Motorcycle driven by the deceased and caused the accident. Due to the said impact, the deceased was thrown out from the Motorcycle, sustained fatal injuries and died in the Hospital. The accident occurred only due to rash and negligent driving by driver of the Bus owned by the appellant and hence, the respondents filed the said claim petition claiming compensation against the appellant-Transport



Corporation as owner of the Bus.

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4.The appellant, owner of the Bus, filed counter statement and denied all the averments made by the respondents in the claim petition. According to the appellant-Transport Corporation, on the date of accident, their Bus bearing Registration No.AP-21-Z-0346 was driven by its driver from Kuppam towards Tirupathur slowly and carefully observing all the traffic rules with moderate speed. While proceeding near a Well at Sivanandapuram Village in Kuppam to Tirupathur road, on seeing the Bus, the deceased/rider of the Motorcycle who was riding the Motorcycle in a rash and negligent manner in the opposite direction without wearing helmet at a high speed, unable to control the vehicle, applied sudden brake on the mud road, skidded on the road and got the Motorcycle dragged on the road. The driver of the Bus, anticipating the accident, turned the Bus to the left side agricultural land and did not hit the Motorcycle. There was no negligence on the part of the driver of the Bus. The accident occurred only due to the negligent act of the deceased, who invited the



accident. FIR was registered against the driver of the Bus, in order to support the family of the deceased. In any event, the respondents have to prove their dependency, age, avocation and income of the deceased Anbalagan to claim compensation. The total compensation claimed by the respondents is exorbitant and prayed for dismissal of the claim petition.

5.Before the Tribunal, the 1st respondent examined herself as P.W.1, examined one Govindaraj, eye-witness to the accident as P.W.2 and marked 13 documents as Exs.P1 to P13. The appellant examined one M.Kesavalu, driver of the Bus as R.W.1, but did not mark any document.

6.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by driver of the Bus and directed the appellant as owner of the said vehicle to pay a sum of Rs.21,56,320/- as compensation to the respondents.



7. Against the said award of the Tribunal dated 17.09.2019, made in M.C.O.P. No.537 of 2018, the appellant – Transport Corporation has come out with the present appeal.

8. The learned counsel appearing for the appellant-Transport Corporation contended that the Tribunal erred in holding that the accident occurred only due to the rash and negligent driving by driver of the Bus owned by the appellant, only based on the evidences of P.W.1, P.W.2 and Ex.P1 - FIR. The Tribunal ought to have considered the evidence of R.W.1, driver of the Bus and fixed entire negligence on the part of the deceased rider of the Motorcycle. The deceased Anbalagan invited the accident by riding the Motorcycle negligently without possessing valid driving license. Admittedly, the accident was head on collision. Hence, the Tribunal ought to have at least fixed contributory negligence on the part of both the vehicles involved in the accident. The claim petition is bad for non-joinder of owner and insurer of the Motorcycle driven by the deceased Anbalagan. The Tribunal without considering the fact that the



6th respondent/father of the deceased is not a dependent of the deceased, erred in awarding compensation to all the respondents. The total compensation awarded by the Tribunal is excessive and prayed for setting aside the award of the Tribunal.

9.The learned counsel appearing for the respondents made submissions in support of the award of the Tribunal and prayed for dismissal of the appeal.

10.Heard the learned counsel appearing for the appellant-Transport Corporation as well as the respondents and perused the entire materials available on record.

11.From the materials on record, it is seen that it is the case of the respondents that on the date of accident, when the deceased Anbalagan was returning to his house in a Motorcycle slowly and cautiously in the left side of the road, while nearing a Well at Sivanandapuram Village on Kuppam to



Tirupattur road, the driver of the Bus owned by the appellant-Transport Corporation, drove the same in the opposite direction in a rash and negligent manner, lost control and dashed against the Motorcycle driven by the deceased and caused the accident. In the accident, the deceased was thrown out from the Motorcycle and sustained fatal injuries. To substantiate their case, the 1st respondent/wife of the deceased examined herself as P.W.1, examined one Govindaraj, eye-witness to the accident as P.W.2 and marked FIR as Ex.P1. Deposition of P.W.1 & P.W.2 corroborated with the contents of FIR. On the other hand, it is the case of the appellant - Transport Corporation that the accident occurred only due to the negligent act of the deceased Anbalagan, who on seeing the Bus coming from opposite direction, unable to control the Motorcycle, applied sudden brake on the mud road, skidded on the road and got the Motorcycle dragged on the road. The driver of the Bus, anticipating the accident, turned the Bus to the agricultural land at left side and did not hit the Motorcycle. To substantiate their case, they have examined the driver of the Bus as R.W.1. But they did not examine any other independent witness. R.W.1.



has not objected to the FIR being registered against him or has not filed any complaint against the rider of the Motorcycle/deceased Anbalagan, alleging negligence. In the absence of any contra evidence to the evidence of P.W.1 & P.W.2, the Tribunal considering the evidence of P.W.1, P.W.2 and Ex.P1 – FIR, held that the accident occurred only due to rash and negligent driving by driver of the Bus owned by the appellant-Transport Corporation. There is no error in the said finding of the Tribunal warranting interference by this Court.

12.As far as the quantum of compensation is concerned, it is case of the respondents that at the time of accident, the deceased Anbalagan was aged 28 years, working as a Mason and was earning a sum of Rs.20,000/- per month. The respondents did not file any document to prove the avocation and income of the deceased. In the absence of any documentary evidence to prove the avocation and income of the deceased, the Tribunal considering the nature of work done by him, fixed a sum of Rs.9,000/- per month as notional income of the deceased. The accident is of the year 2016. Considering the year of



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accident, age of the deceased and nature of work done by him, the monthly income fixed by the Tribunal is meagre. Though the Tribunal erred in excessively awarding a sum of Rs.20,000/- towards loss of estate, has awarded only a meagre sum of Rs.25,000/- towards loss of consortium. In view of fixing meagre amounts towards notional income and loss of consortium, the amount granted by the Tribunal towards loss of estate is not interfered with. The amounts awarded by the Tribunal under other heads are not excessive. There is no error in the said award of the Tribunal warranting interference by this Court.

13.In the result, the appeal is dismissed and the amount awarded by the Tribunal at Rs.21,56,320/- 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 together 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, to the credit of M.C.O.P. No.537 of 2018. On such deposit, the respondents 1, 5 and 6 are



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permitted to withdraw their share of the award amount, along 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 shares of the minor respondents 2 to 4 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 to 4 is permitted to withdraw the accrued interest, once in three months for the welfare of the minor respondents 2 to 4. Consequently, connected Miscellaneous Petition is closed. No costs.

(V.M.V., J) (T.V.T.S., J)
22.09.2022

Index : Yes/No
Speaking Order : Yes/No
gsa

To

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

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2.The Section Officer,
V.R Section,
High Court, Madras.



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**V.M.VELUMANI, J.
and
T.V.THAMILSELVI, J.**

(gsa)

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