



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.01.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3080 of 2014

Sampath

..Appellant/2nd Respondent

Vs.

1.C.Arasu

2.A.Sithayee

..Respondents 1 & 2/Petitioner

3.Superintendent of Police,
Salem.

..3rd Respondent/1st Respondent

4.The District Collector,
Salem.

..4th Respondent/3rd Respondent

(R3 is impleaded as per the order in
I.A.No.1173 of 2005 included as per
Office note 48/14 dated 15.09.2014)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, against the Judgment and Decree dated 25.04.2014, made in MCOP No.1263 of 2005 on the file of Motor Accidents Claims Tribunal, (1st Additional District Judge & Special Judge for E.C Act cases I/C) Salem.

For Appellant : Mr.P.Jagadeesan

For RR1 & RR2 : Mr.S.P.Yuaraaj

For RR3 & RR4 : Mr.D.Gopal
Government Advocate (CS)



O R D E R

(The matter is heard through "Video Conferencing".)

This Civil Miscellaneous Appeal is filed to set aside the Judgment and Decree dated 25.04.2014 made in M.C.O.P.No.1263 of 2005 on the file of Motor Accidents Claims Tribunal (1st Additional District Judge & Special Judge for E.C. Act cases I/C), Salem.

2.The appellant is the 2rd respondent in M.C.O.P.No.1263 of 2005 on the file of the Learned Motor Accident Claims Tribunal (1st Additional Judge and Special Judge) Salem. The respondents 1 & 2 filed the said claim petition claiming a sum of Rs.10,00,000/- as compensation for the death of one Chidambaram, who died in the accident that took place on 27.02.2005.

3.According to respondents 1 & 2, on 27.02.2005 at about 19.00 hrs, while the deceased Chidambaram was walking on the Salem to Attur Main Road, at Minnampalli Marapalam opposite to Susainathan Tea Stall to drink tea and when he was trying to cross the road from the right side of the road to the tea stall, at that time, the 1st respondent's Tempo Traveller Van bearing Reg.No.TN 27 G 1147 came from Valapady towards Salem driven by its driver in an uncontrollable speed without minding the traffic rules and regulations and dashed behind the said Chidambaram and caused the accident. Due to the sudden impact, the said Chidambaram sustained greivous injuries all over the body and died on the spot. The accident has occurred only due to the rash and negligent driving of the driver of the Tempo Traveller. Therefore, the respondents 1 & 2, being the son and mother of the deceased filed the above said claim petition claiming a sum of Rs.10,00,000/- as compensation against the appellant and 3rd respondent, being the driver and owner of the said vehicle.

4.The 3rd respondent-owner of the said vehicle filed counter statement and the same was adopted by the 4th respondent denying all the averments made by the respondents 1 & 2. The 3rd respondent denied the manner of accident as alleged by respondents 1 & 2. The driver of the Tempo Traveller drove the vehicle in an average speed from Valapady towards Salem by adopting all traffic rules and regulations. The deceased who was aged more than 65 years, who considerably lost his eye sight and hearing capacity, all of a sudden darted from the left side of the Salem to Attur Main Road, without noticing the vehicles on both the sides, attempted to cross the road which is a highly sensitive traffic zone. The driver of the Tempo Traveller on seeing the negligent act of the deceased, blowed horn, applied the break, and almost stopped his vehicle. But the deceased who



saw the vehicle very close to him, out of shock, lost his balance, fell down on the front bumper of the vehicle and invited the accident. The accident occurred only due to the negligence on the part of the deceased. Had the deceased been careful, the accident could have been avoided easily. It is also false to state that the deceased was aged about 65 years at the time of the accident and was earning a sum of Rs.3500/- per month. The deceased was a part time scavenger, at S.P.Spining Mills, and the nature of the work was removing and disposing the sanitary napkins of the ladies who are working in the Mill, and even for it he was deputed only for 2 to 3 hours alone, and he was paid a sum of Rs.1,050/- per month. The quantum of compensation claimed by the respondents 1 & 2 is highly excessive and prayed for dismissal of the claim petition.

5.The appellant, being the driver of the vehicle filed separate counter statement and contended that while he was driving the van towards Salem by adopting the traffic rules and regulations, the deceased only suddenly crossed the road and invited the accident. There is no negligence on the part of the appellant and the accident has occurred only due to the negligence on the part of the deceased. The respondents 1 & 2 have to prove that they are the legal heirs of the deceased by producing valid documents. The respondents 1 & 2 ought to have impleaded the Government of Tamil Nadu as necessary party. The appellant denied the age, avocation and income of the deceased. The quantum of compensation claimed by the respondents 1 & 2 is exorbitant and prayed for dismissal of the claim petition.

6.Before the Tribunal, the 1st respondent examined himself as P.W.1 and one Thangaraj was examined as P.W.2 and two documents were marked as Exs.P1 and P2. On the side of the respondents 3, 4 and appellant, the appellant examined himself as R.W.1 and no documentary evidence was marked.

7.The Tribunal considering the pleadings, oral and documentary evidences, held that the accident has occurred only due to rash and negligent driving by the appellant and directed the 3rd respondent and appellant to jointly and severally deposit a sum of Rs.4,93,000/- as compensation to the respondents 1 & 2.

8.Challenging the liability fixed on the appellant as well as questioning the quantum of compensation awarded by the Tribunal in the award dated 25.04.2014 made in M.C.O.P.No.1263 of 2005, the appellant/driver of the van has come out with the present appeal.

9.The learned counsel appearing for the appellant contended that the Tribunal erroneously held that accident occurred due to the negligent driving by appellant. The accident occurred only



due to negligence of the deceased. The deceased Chidambaram suddenly tried to cross the road and due to his negligence only, the accident has occurred. The vehicle belongs to Government of Tamil Nadu and the appellant is only an employee and the Tribunal in paragraph No.6 of the award, erroneously held that the 3rd respondent is liable to pay the compensation and in last paragraph of the award, directed the appellant and 3rd respondent to jointly and severally pay the award amount. In any event, the respondents 3 & 4 are alone liable to pay the compensation as appellant is only employed as a driver of the vehicle. The Tribunal erroneously fixed that age of the deceased at 48 years without any documents while the deceased was aged 65 years at the time of accident. The total compensation awarded by the Tribunal is excessive and prayed for setting aside the award of the Tribunal.

10.The third respondent/Superintendent of Police filed counter affidavit in the present appeal. In the counter affidavit, averments in the counter statement filed in the claim petition is repeated and in addition to that the 3rd respondent has stated that Department has filed a case against the appellant in Cr.No.70 of 2005 under Sections 279 & 304 (A) of IPC on the file of Karipatty Police Station, Salem. The third respondent initiated departmental proceedings against the appellant and prayed for dismissal of the appeal.

11.The learned counsel for the respondents 1 & 2 submitted that the respondents 1 and 2 examined P.W.2 eye witness and also marked F.I.R., which was registered against the appellant and proved that accident occurred only due to rash and negligent driving by the appellant. The deceased was aged 48 years at the time of accident and in the Postmortem report, the age of the deceased was mentioned as 48 years. The Tribunal accepted the same and fixed the age of the deceased at 48 years. The appellant or respondents 3 and 4 did not let in any evidence to substantiate their case that the deceased was aged more than 60 years. In the absence of contra evidence to the claim of the respondents 1 and 2 that the deceased was aged 48 years in the claim petition which is supported by mentioning the same age in the postmortem certificate, the Tribunal rightly applied multiplier '13' by fixing the age of the deceased as 48 years. The total compensation awarded by the Tribunal is not excessive and prayed for dismissal of the appeal.

12.Heard the learned counsel appearing for the appellant as well as learned counsel appearing for respondents 1 & 2 and the learned Government Advocate (CS) appearing for the respondents 3 & 4 and perused the entire materials on record.



13. From the materials on record, it is seen that the respondents 1 and 2, by letting in oral and documentary evidence has proved that the accident occurred only due to the rash and negligent driving by the appellant. P.W.2 is an eyewitness and the appellant was examined as R.W.1. The Tribunal considering the fact that P.W.2 is an independent eyewitness, accepted the evidence of P.W.2 rather than evidence of R.W.1, who is an interested witness. The Tribunal considering the materials placed before it properly, has given valid reason for holding that accident has occurred only due to rash and negligent driving by the appellant. There is no error in the said finding of the Tribunal warranting interference by this Court.

14. The learned counsel for appellant contended that the vehicle belongs to Government of Tamilnadu and the appellant is only an employee and therefore the respondents 3 and 4 alone are liable to pay the compensation. According to learned counsel for appellant, the Tribunal erroneously fixed the liability on the appellant to pay the compensation along with 3rd respondent. Admittedly appellant was driving the vehicle at the time of accident. The findings of the Tribunal that accident occurred only due to the rash and negligent driving by the appellant is confirmed in this Civil Miscellaneous Appeal. The accident has occurred only due to the negligence on the part of the appellant and the appellant only drove the vehicle during his course of employment. For the liability fixed on the driver, the respondents 3 & 4 are vicariously liable to pay the compensation. The 4th respondent has not denied that the vehicle belongs to the Government of Tamil Nadu. Hence the respondents 3 and 4 as owner of the vehicle are vicariously liable to pay the compensation. The award of the tribunal is modified directing appellant and the respondents 3 and 4 to pay the compensation jointly and severally.

15. As far as the quantum of compensation is concerned, it is the case of the appellant and the respondents 3 and 4 that the deceased was aged 60 years at the time of accident and due to his age, he lost his eye sight. The said contention is contrary to the materials on record. The respondents 1 & 2 have pleaded in the claim petition that the deceased was aged 48 years at the time of accident. This was supported by the age mentioned in Ex.P2/postmortem certificate. The appellant and the respondents 3 & 4 even though claimed that the deceased was aged 60 years at the time of accident, they have not filed any document to support their case. The Tribunal considering the age mentioned in the postmortem certificate, fixed the age of the deceased as 48 years and awarded compensation. There is no error in the said award of the Tribunal warranting interference by this Court.



16. In the result, this Civil Miscellaneous Appeal is partly allowed and a sum of Rs.4,93,000/- awarded by the Tribunal as compensation to the respondents 1 & 2, along with interest and costs is confirmed. The appellant and respondents 3 & 4 are jointly and severally directed to deposit the award amount along with interest and costs, less the amount if any already deposited, within a period of eight weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.1263 of 2005 on the file of Motor Accidents Claims Tribunal, (1st Additional District Judge & Special Judge for E.C Act cases I/C) Salem. On such deposit, the respondents 1 & 2 are permitted to withdraw their respective share of the award amount as per the ratio of apportionment fixed by the Tribunal, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. The appellant is permitted to withdraw the award amount lying in the credit of M.C.O.P.No.1263 of 2005, if the award amount has already been deposited by him. No costs.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

ata/krk

To

1. The Motor Accidents Claims Tribunal,
The 1st Additional District & Special Judge
for E.C Act cases I/C,
Salem.

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

+1cc to Mr.P.Jagadeesan, Advocate SR. No. 3614
+1cc to Mr.S.P.Yuaraj, Advocate SR. No.3848
+1cc to Special Government Pleader (CS) SR. No.3818

C.M.A.No.3080 of 2014

AD (CO)
PR (28/03/2022)