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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.01.2022

CORAM :

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.M.A.NO.2293 OF 2018

AND

C.M.P.NO.17475 OF 2018

The Managing Director,
Tamil Nadu State Transport Corporation,
Dharmapuri. ...Appellant / Respondent

Versus

1.Manickmmal
2.K.Gobi
3.K.Mohanasundaram
4.K.Mahalakshmi ...Respondents / Petitioners

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 to set aside the Decree and Judgment dated 23.02.2017 made in MCOP No.1507 of 2013 on the file of the Motor Accident Claims Tribunal, Special Subordinate Judge, Tirupattur.

For Appellant : Mr.D. Venkatachalam

JUDGMENT

This appeal arises out of the award passed by the Motor Accident Claims Tribunal, Special Subordinate Judge, Tirupattur in MCOP No.1507 of 2013.

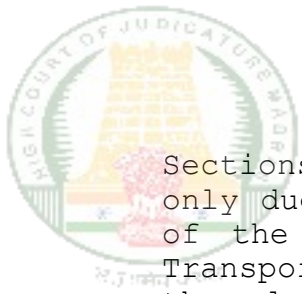
2. This is a case of fatal accident. It is the case of the claimants that, on 16.05.2009 at about 02.30 p.m. near Kethandapatti, in between Vaniyambadi - Krishnagiri, on N.H.Road, the bus bearing Registration No.TN-29-N-2192 belonging to the appellant Transport Corporation, was driven by its driver in the course of his employment in a very rash and negligent manner towards Krishnagiri from Vaniyambadi and dashed against Kannaiyan, who was proceeding on the extreme left side of the road by his TVS XL Motor cycle bearing Registration No.TN-23-AY-2592 in the same direction slowly and cautiously. Due to impact, the said Kannaiyan sustained grievous injuries on his head and his motor cycle was also completely damaged.



Immediately after the accident, the injured Kannaiyan was rushed to the Government Hospital, Vaniyambadi for first aid treatment. Thereafter, the said Kannaiyan was referred to the Government Vellore Medical College Hospital, Adukambarai and thereafter, the said Kannaiyan was taken to Christian Medical College Hospital, Vellore and thereafter, he was taken treatment to V.H.S., Medical Center, Chennai and admitted as in-patient and CT scan was taken to the said Kannaiyan in the Malar Hospital, Chennai on 18.05.2009. The said Kannaiyan has taken treatment in the V.H.S. Hospital, Chennai as an in-patient from 17.05.2009 till death. He died in the V.H.S. Hospital, Chennai on 26.05.2009. The body of the deceased Kannaiyan was taken to the Government General Hospital, Chennai, for post-mortem by a private car. After the post-mortem, the body of the deceased Kannaiyan was taken to his native place for funeral rites by a private car.

3. The said accident was reported to the Natrampalli Police and the said Police has registered the case in Crime No.363 of 2009 under Sections 279 and 337 IPC and the said police has altered the Section into one under Section 304-A IPC, since the injured Kannaiyan died in the hospital subsequently. The driver of the bus with intention to escape from his liability and also the prosecution, gave complaint falsely as against the deceased Kannaiyan. On the basis of the complaint, the said Police has registered an FIR as against the said Kannaiyan. The accident took place only due to rash and negligent driving of the bus by its driver in the course of his employment under the appellant Transport Corporation. So, the appellant Transport Corporation is liable to pay compensation to the claimants for the death of Kannaiyan in the above said accident.

4. Per Contra, the driver of the appellant's bus bearing Registration No.TN-29-N-2192 has taken trip from Chennai at about 09.05 hours to proceed towards Palacode and it was driven by its driver with slow speed and observing all traffic rules on 16.05.2009. While the vehicle was nearing Kathandapatti Jeeva Nagar on Vellore to Krishnagiri NH road at about 14.50 hrs at that time, the rider of the TVS 50 the deceased Kannaiyan drove his vehicle bearing Registration No.TN-23-AY-2592 and attempted to cross the road from left to right side without observing traffic rules and also in a negligent manner and on seeing this, the driver of the appellant's bus swerved his bus to right side to avoid hit against the TVS 50 rider, but the rider of the TVS 50 came in contact with the appellant Transport Corporation bus, which resulted in the accident. Due to impact, the rider of the TVS 50, nearly the deceased sustained injuries and was taken to Government Hospital at Vaniyambadi for treatment. Due to the accident, the police authorities have registered a case against the TVS 50 rider in Crime No.363 of 2009 for the offences under



Sections 279 and 337 IPC at Natrampalli. The accident occurred only due to the fault of the TVS 50 rider and not by the driver of the appellant Transport Corporation bus and the appellant Transport Corporation bus not liable to pay any compensation to the claimants as alleged in the petition. Since the accident took place only because of the deceased, the claimants are not entitled to claim compensation from the appellant Transport Corporation. The Insurance Company and the owner of the TVS 50 XL are all necessary parties on this claim for proper adjudication. The complaint has been registered against the TVS 50 rider and there is no negligence or carelessness on the part of the driver of the appellant Transport Corporation bus and as such, no liability also could be fastened upon the appellant Transport Corporation. Therefore, the claimants are not entitled to any compensation from the appellant Transport Corporation, since the deceased is solely responsible for the alleged accident and that there is no negligence or carelessness on the part of the driver of the appellant Transport Corporation bus.

5. To substantiate their case, on the side of the claimants, PW1-Manickammal and PW2-Murugan were examined and Exs.P1 to ExP.11 were marked. On the side of the appellant/Transport Corporation, RW1-Maadesh, was examined and no document was marked.

6.The Tribunal, after considering the oral and documentary evidence, held that the driver of the appellant bus was responsible for the accident and awarded compensation of Rs.12,31,448/- to the claimants. Assailing the award, the Transport Corporation has filed the present appeal.

7.Heard Mr.D.Venkatachalam, learned counsel appearing for the appellant Transport Corporation and perused the materials available on record.

8.This appeal has been filed only challenging the quantum and hence, the other issues are not dealt with herein.

9.Though the learned counsel appearing for the appellant/Transport Corporation has contended that the award is on the higher side and it requires reduction, on a perusal of the records, I find that the Tribunal, on proper appreciation of evidence, the salary certificate (Ex.P3), has fixed the monthly income and the salary of the deceased was Rs.13,474/- and by adopting correct multiplier, awarded a just and reasonable compensation. I find no reason to interfere with the conclusion reached by the Tribunal. This appeal has no merit. Hence, this appeal is liable to be dismissed.



10. In such view of the matter, this Civil Miscellaneous Appeal is dismissed as devoid of merits. The impugned award of the Tribunal is hereby confirmed. The appellant/Transport Corporation is directed to deposit the entire award amount with accrued interest and costs, as awarded by the Tribunal less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants are permitted to withdraw the award amount less the amount, already withdrawn, if any, together with proportionate interest and costs as awarded by the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-VII)

// True Copy //

Sub Assistant Registrar

msm

To

Motor Accident Claims Tribunal,
Special Subordinate Judge,
Tirupattur.

Copy To

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

+1cc to Mr.D.Venkatachalam, Advocate Sr.No.419

C.M.A.No.2293 of 2018
and
C.M.P.No.17475 of 2018

PM(CO)
RVM(06/06/2022)