



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.04.2023

CORAM:

The HONOURABLE MRS.JUSTICE N.MALA

C.M.A.No.847 of 2023
and C.M.P.No.7868 of 2023

Tamilnadu State Transport Corporation (Salem) Limited,
rep., by it Managing Director,
12, Ramakrishna Road, Salem-636 007.

... Appellant

Vs.

1. Thangamani

2.Dhanalakshmi

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 23.02.2022 made in M.C.O.P.No.1565 of 2018 on the file of the Special Motor Accidents Claims Tribunal, Tiruppur.

For Appellant : M/s.D.Nitin

For Respondents : Mr.Ma.Pa.Thangavel

JUDGMENT

This Civil Miscellaneous Appeal is filed by the Transport Corporation against the judgment and decree dated 23.02.2022 in M.C.O.P.No.1565 of 2018 by the Special Motor Accidents Claims Tribunal.



2. The Transport Corporation has filed the appeal challenging both negligence as well as quantum of compensation awarded by the Tribunal. The parents of the deceased/Karthik who died in motor accident that took place on 21.05.2018 filed the claim petition. According to the claimants, the accident occurred due to rash and negligent driving of the driver of the Transport Corporation bus. The deceased Karthik was working as Marketing Person in a private company and earning a sum of Rs.15,000/- per month. The claimants therefore filed the above claim petition, claiming compensation of Rs.40,00,000/-for death of their son.

3. The Transport Corporation filed a counter denying all the contentions raised in the claim petition including negligence and quantum.

According to the Transport Corporation, it was the deceased's own negligence that resulted in the accident.

4. Before the Claims Tribunal, first claimant examined himself as P.W.1 and two other witnesses were examined. Exs.P.1 to P.7 were marked in support of the claim. The Transport Corporation examined the Driver and did not mark any document.

5. The Tribunal on a conspectus of the pleadings, the oral and



documentary evidence on record returned a finding of negligence against the Driver of the Transport Corporation bus and assessed the compensation payable to the claimants at Rs.19,26,400/- along with interest at the rate of 7.5% per annum. Aggrieved by the finding on negligence and quantum of compensation awarded by the Tribunal, the Transport Corporation has filed the above appeal.

6. The learned counsel for the appellant submitted that the finding of the Tribunal on negligence was unsustainable on the facts of the case. The learned counsel further submitted in the absence of any evidence in the form of salary certificate, the assessment of the income of the deceased at Rs.13,000/- per month is unsustainable. The learned counsel therefore submitted that the award of the Tribunal was erroneous and deserved to be set aside.

7. The learned counsel for the respondent on the other hand submitted that as the finding of the Tribunal on the issue of negligence was based on both oral and documentary evidence on record, the finding was unassailable. The learned counsel further submitted that the assessment of the income of the deceased who was 29 year old at the time



compensation awarded by the Tribunal did not call for any interference.

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8. I have heard the learned counsels appearing on either side and perused the entire material placed on record.

9. The Tribunal has returned a finding of negligence against the Driver of the Transport Corporation by relying on the evidence of P.W.2 who was an eye witness to the accident and on the basis of the Ex.P.6 the sketch plan of the accident site. The accident took place near roundana while the deceased was proceeding in his motor cycle from South to North. At that time, the Transport Corporation bus which was proceeding from East to West, while trying to overtake another bus came on the extreme right side of the road and hit the deceased motor cycle. Therefore, it is clear that the negligence can be attributed only to the Driver of the Transport Corporation bus. The evidence of P.W.2, the eye witness to the accident is preferred as he is an independent witness. The evidence of the Driver of the Transport Corporation bus, in my view, is liable to be rejected as it is interested and I therefore find no infirmity or illegality in the findings of the Tribunal on negligence which finding, I find to be cogent and based on evidence placed on record. I therefore confirm the finding of the Tribunal on the issue of negligence.



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10. As far as the quantum of compensation is concerned it is seen that deceased was aged about 29 years at the time of accident which took place on 21.05.2018. Considering the year of accident and the cost escalation for the year 2018, I am of the view that assessment of income of the deceased at Rs.13,000/- per month is reasonable. I also find the compensation fixed under other heads is also just, fair and reasonable and in accordance with law. In light of the discussions made above, I find no merits in the appeal and the same is dismissed. It is submitted by the learned counsel for the appellant that entire award amount has also been deposited before the Tribunal in the E.P.No.117 of 2021 proceedings. In view of the same, the respondent claimants are permitted to withdraw the entire compensation amount as per the shares fixed by the Tribunal along with accrued interest by making proper application before the Tribunal. The appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

11.04.2023

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Index : Yes/No

Internet: Yes/No

Neutral Citation : Yes/No



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N.MALA, J.

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To:

The Special Motor Accidents Claims Tribunal,
Tiruppur.

C.M.A.No.847 of 2023

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