



C.M.A.No.1887 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

C.M.A.No.1887 of 2016

1. K. Sekar [Died]
2. Thulasi
3. Chitra
4. Srinivasan
5. Gokul
6. Logeshwari
7. Jayalakshmi

... Appellants/petitioners

[Appellants 2 to 7 brought on record as Lrs of the deceased Sole Appellant viz., K.Sekar vide order dated 29.03.2023 made in CMP No.363 of 2020]

Vs.

The Managing Director,
State Express Transport Corpn. Ltd.,
Pallavan Salai, Chennai – 2.

... Respondent/Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Award and Decree dated 22.08.2014, made in M.C.O.P.No.2185 of 2008, on the file of the Motor Accidents Claims Tribunal, II Judge, Small Causes Court, Chennai.

For Appellants : Mr. T. G. Balachandran
For Respondent : Mr. K. Kathiresan,
Standing Counsel for SETC



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JUDGMENT

The Civil Miscellaneous Appeal has been filed by the claimant challenging the contributory negligence and quantum fixed by the Tribunal in the Award dated 22.08.2014 in M.C.O.P.No.2185 of 2008 on the file of the Motor Accidents Claims Tribunal (II Judge, Small Causes Court), Chennai.

2. The parties are referred to hereunder according to status and ranking before the Tribunal.

3. The case of the claimant in brief is that on 30.03.2008 at 6.30 a.m., the claimant was riding his two-wheeler along with his wife and two children on Poonamallee By-pass road, near MTC Bus stop, at that time, State Express Transport Corporation Bus, belongs to the first respondent bearing Registration No.TN 01 N 5060 came from the other side of the road and taken 'U' turn to enter the other side of the road and hit on the two-wheeler. Due to which, the claimant sustained grievous injuries and filed Claim Petition claiming compensation of Rs.6,00,000/- from the respondent.



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4. The respondent filed counter and contended that at Poonamallee Bye-pass road, near MTC Bus stop, the driver of the bus took 'U' turn on his right side, at that time, the petitioner herein rode his two-wheeler with four pillion riders, rashly and negligently turned his left and taken 'U' turn without noticing the upcoming bus, resulted in accident. Therefore, only the petitioner is responsible for the accident and no compensation to be paid to him by the respondent and prays to dismiss the same.

5. Before the Tribunal, on the side of the petitioner two witnesses were examined as P.W.1 and P.W.2 and Exs.P1 to P11 were marked. On the side of the respondent, R.W.1 was examined and no documents marked.

6. The Tribunal in point No.1 has considered the manner in which the accident has taken place and held that the claimant has also contributed to the negligence at the ratio of 50% and in Point No.3, the Tribunal has considered the quantum of compensation to be awarded and accordingly, fixed total compensation as Rs.3,01,000/- in which, 50% of the compensation is to be ordered to be paid to the claimant.



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7. Aggrieved over the above finding of the Tribunal with regard to liability as well as quantum of compensation, this appeal has been filed by the claimant. During this Court proceedings, the claimant is passed away and his legal heirs have brought on record as per the Order of this Court, dated 29.03.2023 made in C.M.P.No.363 of 2020.

8. The learned counsel for the claimants would submit that without appreciating proper evidence adduced on the side of the respondent, the Tribunal has wrongly held that the claimants have also contributed to the accident, and prays to set aside the same. He has also contended that the compensation fixed under various heads is not, in accordance with the norms followed by the claims Tribunal and prays to enhance the award.

9. Per Contra, the learned counsel for the respondent has submitted that based on the evidence placed on record and also the fact that four persons had travelled in the two-wheeler, the Tribunal has rightly held that the contributory negligence fixed as 50% on the part of the claimants also and prays to dismiss the appeal.



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10. I have considered the submissions made on both sides and also perused the records placed on record.

11. It is the admitted case of the claimants that at the time of accident, four persons had travelled in the two-wheeler. It is stated that the claimants had travelled in the two-wheeler along with his wife and two minor children on Chennai-Poonamallee bypass road by observing road regulations on the left hand side of the road, at that time, the driver of the bus belongs to the respondent came in the opposite direction and suddenly cross the median and entered into the opposite direction and stopped the bus in the middle of the road, which resulted in causing the accident. To disprove this evidence, the respondent has examined the conductor of the bus as R.W.1. He has deposed in his chief examination that, totally five persons were travelled in the two-wheeler at the time of accident i.e., the claimant, his wife and three children were travelled and while the bus was crossing the road suddenly, the deceased who was riding the two-wheeler, lost his control due to overload and fell down and sustained injuries to them. In the cross examination, he has stated that, the bus was taking 'U'



turn by crossing the median, at that time, we heard screaming of people and thereafter, they have got down the bus and seen the claimant and his family members who were sustained injuries. He has stated that he was not aware about the person who gave the police complaint about the accident. He has also stated that he was not directly seen the manner in which the accident had taken place.

12. Based on this evidence, the Tribunal has held that the driver of the bus is responsible for the accident. However, the Tribunal has recorded that since four persons travelled in the two-wheeler, there is a contributory negligence on the part of the claimants also. Even though, it is stated that five persons were travelled in the two-wheeler, but no records produced before the Tribunal or before this Court to show that five persons were travelled in the two-wheeler. However, it is admitted by the claimants that the deceased had travelled along with his wife and two children and while the claimant was riding his two-wheeler, the accident was caused when the bus abruptly entered and stopped in the middle of the road. The evidence of R.W.1-Conductor of the bus also shows that he has not witnessed the occurrence and only after a scream of injured, he came to



know that the bus hit the two-wheeler. Hence, there is absolutely no contra evidence adduced on the side of the respondent.

13. This evidence has not been properly appreciated by the Tribunal and there is no evidence placed on record to show that how many persons exactly travelled in the two-wheeler at the time of accident and whether travelling four persons in the two-wheeler is the reason for the accident or not? However, the evidence placed on record clearly shows that the bus which was coming in the opposite direction, suddenly by crossing the median and stopped in the middle of the road shows that, it is a clear case of the negligent act on the part of the driver of the bus and could not be considered as contributory negligence on the part of the claimant.

14. This Court is of the view that there is no contributory negligence on the side of the deceased as held by the Tribunal and without appreciating the evidence properly, the Tribunal has held that the deceased has also contributed the negligence as 50% and the same is liable to be set aside and this Court finds that the negligent driving of the driver of the



respondent alone is reason for the accident. Accordingly, the contributory negligence fixed on the deceased is hereby set aside.

15. With regard to the quantum of compensation, the Tribunal has granted compensation under the following heads:

“For Loss of Income for 6 months period a sum of Rs,48,000/-; For Transportation a sum of Rs.5000; For Extra Nourishment a sum of Rs.7,000/-; For Damages to Clothes a um of Rs.1,000/-; For Medical Expenses a sum of Rs.65,000/-; For Loss of amenities of life a sum of Rs.25,000/-; For Attender Charges a sum of Rs.10,000/-; For Pain and Sufferings a sum of Rs.40,000/-; For disability at the rate of 2,000/- per percentage of disability a sum of Rs.1,00,000/-. In all, total compensation of a sum of Rs.3,01,000/- was awarded.

16. The Discharge Summary-Ex.P1 shows that the deceased has undergone treatment at Sundar Hospital, Poonamalle, Chennai from 08.04.2008 to 16.04.2008 for 9 days and it is recorded that he has suffered *inter Trochantic Fracture* and after he discharged from the Hospital, he has taken as out-patient treatment. However, the Tribunal has awarded loss of



income for the period of six months at Rs.48,000/- is just fair and reasonable hence the same need not be modified.

17. The main contention of the claimants are that the disability has not been properly considered by the Tribunal and only Rs.2,000/- is awarded per percentage of disability which requires modification. However, the accident was taken place in the year 2008 and fixing of Rs.2,000/- per percentage of disability by the Tribunal is proper and also it is the norms followed by the Courts by fixing Rs.2,000/- per percentage for the accident held in the year 2008. Accordingly, I am not inclined to modify the amount awarded under the head disability. Similarly, under various heads the Tribunal has rightly granted compensation and I am of the view that no modification is required for the compensation awarded.

18. In the result, this Civil Miscellaneous Appeal is partly allowed. The Award and Decree passed in M.C.O.P.No.2185 of 2008, dated 22.08.2014 by the Motor Accidents Claims Tribunal/II Judge, Small Causes Court, Chennai is hereby modified. The findings of the Tribunal in fixing the contributory negligence of 50% on the part of the deceased is hereby set



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aside. The respondent-Transport Corporation is directed to deposit the compensation amount awarded by the Tribunal with interest at the rate of 7.5% per annum from the date of Claim Petition till the date of deposit. On such deposit the claimants are equally entitled to withdraw the compensation amount. In other aspects, the award of the Tribunal shall stand confirmed. There shall be no order as to costs.

14.08.2023

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Index : Yes / No

Speaking Order: Yes / No

Neutral Citation Case : Yes/No

To

1.The II Judge,
Small Causes Court,
Motor Accidents Claims Tribunal,
Chennai.

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



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K.RAJASEKAR,J.

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