



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 13.07.2023

CORAM:
THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.889 of 2022
and C.M.P.No.6581 of 2022

The Managing Director,
The Tamil Nadu State Transport Corporation (Ltd)
Bye Pass Road, Madurai 625 010.
Branch Address:
CTC Diplo, CTC Kankeyam,
Cross Road, Tiruppur.

...Appellant

Vs.

1.C.Avinasiappan
2.A.Yuvaraj
3.A.Thilagavathi

...Respondents

PRAYER : The Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 20.11.2019 in M.C.O.P.No.879 of 2018 on the file of the Motor Accident Claims Tribunal, Special District Judge, Tiruppur.

For Appellant : Mr.G.Ramar for
Mr.Sudalaiyandi

For Respondents : Mr.Ma.P.Thangavel for R1 & R2
No appearance for R3



J U D G M E N T

WEB COPY This Civil Miscellaneous Appeal has been filed by the appellant/Transport Corporation challenging the award dated 20.11.2019 in M.C.O.P.No.879 of 2018 on the file of the Motor Accident Claims Tribunal, Special District Judge, Tiruppur.

2.The respondents herein filed the claim petition claiming a sum of Rs.30,00,000/- as compensation for the death of one Rajamani, who died in the accident that took place on 26.12.2017. According to the respondents, on the date of accident i.e., on 26.12.2017 at 5.15 a.m., while the deceased was walking on the Dharapuram to Tirupur main road, from North to South direction, a bus belonging to the appellant/Transport Corporation, which came on the same direction, driven by its driver in a rash and negligent manner and without observing the traffic rules and regulations, dashed against the deceased and caused the accident. In the accident, the deceased Rajamani sustained fatal injuries and inspite of treatment, died in the hospital. Hence, they were entitled to a claim of Rs.30,00,000/-.

3. The appellant/Transport Corporation filed a counter statement denying the averments made by the respondents and contended that the driver of the bus



was not responsible for the accident. The accident occurred due to negligence of the deceased and hence, the deceased is solely responsible for the accident. Therefore, the appellant was not liable to pay any compensation to the respondents. The appellant had also denied the age, avocation and income of the deceased. In any event, the compensation claimed by the respondents is excessive and prayed for dismissal of the claim petition.

4.Before the Tribunal, the respondents examined three witnesses and marked four documents as Exs.P1 to P4. The appellant/Transport Corporation examined Tamilarasan, the driver of the bus as R.W.1 and did not let in any documentary evidence.

5. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving of the driver of the bus belonging to the appellant/Transport Corporation and directed the appellant to pay a sum of Rs.15,40,000/- as compensation to the respondents.

6.Against the said award dated 20.11.2019 made in M.C.O.P.No.879 of 2018 granting compensation to the respondents, the appellant/Transport Corporation has come out with the present appeal.



7. The learned counsel for the appellant submitted that the finding of the Tribunal on negligence as well as quantum is erroneous. It is the case of the appellant that the deceased contributed to the accident as he was sitting on the main road. The driver of the bus was blinded, since the lorry which came on the opposite direction had bright head lights and it was also misty at the relevant point of time. In view of the negligence on the part of the deceased, the Tribunal ought to have fixed contributory negligence. The learned counsel further submitted that the notional income of the deceased at Rs.10,500/- per month fixed by the Tribunal is on the higher side. The respondents have not filed any proof to establish the income of the deceased and in the absence of the same, Tribunal ought not to have fixed notional income, which is on the higher side.

8. Per contra, the learned counsel for the respondents submitted that the respondents examined two witnesses to show that the deceased and another person were walking on the road and the version of the appellant that they were sitting on the road cannot be believed. The Tribunal had disbelieved the evidence of R.W.1, who had stated that the deceased was sitting on the road. The Tribunal has rightly held that the driver of the bus belonging to the appellant was guilty of negligence. The learned counsel further submitted that



since the accident is of the year 2017, the Tribunal had correctly fixed the notional income of the deceased at Rs.10,500/- per month. Hence, there is no reason to interfere with the award of the Tribunal.

9.This Court on perusal of the documents and materials on record finds that the respondents have examined two witnesses to establish that the deceased was walking on the road and their evidence is cogent and there is no reason to disbelieve their evidence. R.W.1's evidence which is to the contrary does not inspire confidence. The Tribunal rightly disbelieved his evidence. Therefore, this Court holds that the accident had taken place only due to the negligent driving of the driver of the bus belonging to the appellant.

10.As regards quantum, this Court finds that the notional income fixed by the Tribunal at Rs.10,500/- is just and reasonable. The accident took place in the year 2017. It is a matter of common knowledge that even a daily wage labourer would have earned that amount during the said period. Therefore, this Court finds that the award passed by the Tribunal is just and reasonable and there is no reason to interfere with the award passed by the Tribunal.



11. In the result, this Civil Miscellaneous Appeal is dismissed and the sum of Rs.15,40,000/- awarded by the Tribunal as compensation to the respondents along with interest and costs is confirmed. The appellant/ Transport Corporation is directed to deposit the entire award amount along 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. On such deposit, the respondents are permitted to withdraw their respective share of the award amount, on the basis of apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn. Consequently, connected Miscellaneous Petition is closed. No costs.

13.07.2023

Index: Yes/No
Internet: Yes/No
vkr

To

- 1.The Motor Accident Claims Tribunal /
Special District Judge, Tiruppur.
- 2.The Section Officer
VR Section, High Court of Madras.



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SUNDER MOHAN,J.

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