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C.M.A.No.2743 of



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.12.2023

CORAM :

THE HONOURABLE MR. JUSTICE K.RAJASEKAR

**C.M.A.No.2743 of 2021
and
C.M.P. No. 15722 of 2021**

The Managing Director,
State Express Transport Corporation Tamilnadu Limited,
No. 2, Pallavan Salai,
Chennai – 600 002.

... Appellant

Vs.

S. Viramani

... Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgement and decree dated 18.12.2019 in M.A.C.T.O.P No. 888 of 2010, on the file of the Motor Accidents Claims Tribunal (Principal District Court) at Puducherry and be pleased to dismiss the above claim.

For Appellant : Mrs. N.Menaka
for Mr. K.Kathiresan

For Respondent : No appearance

JUDGMENT



The appeal filed by the Transport Corporation challenging the award dated 18.12.2019 in M.A.C.T.O.P.No. 888 of 2010 on the file of the Motor Accidents Claims Tribunal (Principal District Court), Puducherry wherein the Tribunal has held that the driver of the Transport Corporation has negligently drove the bus and caused accident.

2. For the better appreciation of the appeal, the parties herein are referred to the litigative status before the Tribunal.

3. On 02.04.2010, early morning the deceased V. Anbarasan was travelling as pillion rider along with his cousin Arivuselvan- Rider in a two wheeler towards Puducherry, while they were reached near Madagadi Main Road, Puthur around 6.00 a.m., the Transport corporation bus came in the opposite direction dashed against them, which resulted in causing severe injuries to the deceased and he died on the spot. The father of the deceased filed this claim petition seeking compensation for a sum of Rs. 1,35,00,000/- by invoking Section 166 of Motor Vehicle Act, 1988

4. The Transport Corporation contested the claim and contended that the rider of the two wheeler, negligently entered into opposite direction



of the road by overtaking a lorry and dashed on the bus. The entire negligent is on the part of the rider of two wheeler in which deceased was travelled. The Transport Corporation is not liable to pay compensation. They also disputed age, avocation and monthly income of the deceased as well as dependency of the claimant.

5. The Tribunal on the basis of evidence placed on records, in Point No. 1 has held that driver of the bus is responsible for the accident and in Point No. 2, quantified the compensation and awarded a sum of Rs. 14,60,000/- with interest at the rate of 6% per annum from the date of accident till the date of realization.

6. Aggrieved over the liability to pay compensation fixed against the Corporation, this appeal has been filed.

7. The learned counsel appearing for the Transport Corporation vehemently contended that the rider of the two wheeler namely Aruviselvan has entered into the middle of the road by overtaking the lorry and dashed against the bus belongs to the bus corporation. To prove the same, they have also examined the RW1 but the evidence of RW1 has not been



properly appreciated by the Tribunal and prays to set aside the same.

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8. I have considered the arguments and perused the entire records.

Before the Tribunal, PW2- eye witness has stated that on 02.04.2010 at about 06.00 hours when the deceased V.Anbarasan and his cousin Arivuselvan while driving at Madagadi Main Road, Puthur, Puducherry, the Transport Corporation bus came in the opposite direction in a rash and negligent manner without following the traffic rules and hit against them and caused death to the deceased V.Anbarasan on the spot. He has lodged police complaint as against the driver of the bus. The first information report was also registered against the driver of the bus.

9. The Transport Corporation examined one Ramakrishnan as RW1 and he has stated that while overtaking the lorry in the opposite direction, the rider of two wheeler has entered other side of the road and dashed against the respondent's bus. This evidence has not been accepted by the Tribunal on the ground that driver of the bus has not been examined and this person is not the driver. It is further held that the first information report is registered against the driver of the bus and the evidence of PW2 is more probable than the evidence of RW1 and evidence of PW2



corroborated by the other evidence including Ex. P1-FIR in this case.

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10. The respondent has not examined the driver of the bus. Per contra, examined RW1 who is not the driver of the bus. He has not stated how he has witnessed the occurrence. While deciding the claim petition filed against the Motor Accident Claim Tribunal, the claimants are expected to prove their case, on the touchstone of preponderance of probability and rule of strict proof is not applicable to the cases of this nature. The Hon'ble Supreme Court of India in the case of ***Mangla Ram Vs The Oriental Insurance Co. Ltd.*** in ***Manu/SC/0332/2018*** has observed as follows:

“17. The Court restated the legal position that the claimants were merely to establish their case on the touchstone of preponderance of probability and standard of proof beyond reasonable doubt cannot be applied by the Tribunal while dealing with the motor accident cases. Even in that case, the view taken by the High Court to reverse similar findings, recorded by the Tribunal was set aside. Following the enunciation in Bimla Devi's case (supra), this Court in Parmeswari (supra) noted that when filing of the complaint was not disputed, the decision of the Tribunal ought not to have been reversed by the High Court on the ground that nobody came from the office of the SSP to prove the complaint.”



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11. The Hon'ble Supreme Court of India in the case of ***Bimla Devi and Ors. Vs. Himachal Road Transport Corporation and Ors.*** in ***MANU/SC/0577/2009*** is as follows:-

“15. In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied.

For the said purpose, the High Court should have taken into consideration the respective stories set forth by both the parties.”

12. The Tribunal after appreciating both sides evidence and on the ground that first information report is registered against the driver of the bus and the deceased, the driver of the bus has not been examined to disprove the evidence of the eye witness PW2. This Court is of the view that there is no infirmity in findings of the Tribunal and there is no reason to interfere with. As far as quantum of compensation, the Transport Corporation has



not challenged the same. I have also perused the quantum of compensation and since claimant has not raised any grievances over the quantum of compensation. This Court is not inclined to reconsider the same and same is hereby confirmed.

13. Accordingly, this Civil Miscellaneous Appeal stands dismissed.

No costs. Consequently, the connected miscellaneous petition is closed.

12.12.2023

ns1
Index:Yes/No
Speaking Order : Yes/No
Neutral Citation Case : Yes/No

To

1. Motor Accidents Claims Tribunal,
Principal District Judge, Puducherry
2. The Section Officer,
VR Section, High Court, Madras.



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K.RAJASEKAR, J.

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