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C.M.A.No.2358 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2023

CORAM

MR.JUSTICE N.SESHASAYEE

C.M.A.No.2358 of 2023
and C.M.P.No.22298 of 2023

The Managing Director,
Tamil Nadu State Transport Corporation
KUM Limited,
(Trichy - 620001).

... Appellant

Vs

1.Radha
2.Ananthi
3.Sivakannu

4.The Managing Director,
Tamil Nadu State Transport Corporation Limited,
Koyembedu Depot, Koyambedu,
Chennai-600 107.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, seeking to set aside the judgement and decree dated 06.02.2023 made in MCOP.No.6665 of 2019 on the file of the Motor Accident Claims Tribunal/Chief Judge Small Causes Court, Chennai.

For Appellant : Mr.M.Murali Vinodh

For Respondents : Mr.C.Prabakaran for R1 to R3
Mr.S.S.Santhosa Kumar for R4



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JUDGEMENT

1.1 Certain Ambayiram was fatally knocked down on 15.11.2019 when a bus bearing Regn.No.TN 45 N 3026 belonging to the appellant/Transport Corporation herein knocked down the two wheeler bearing Regn.No.TN 61 M 4628, which the victim of the accident was riding. Seeking compensation, his dependents, who are his parents and his widow, moved the Tribunal with MCOP.No.6665 of 2019.

1.2 Ambayiram was 32 years old at the relevant time and was stated to be working as a Cable TV Operator. Reckoning his income notionally at Rs.20,000/- per month, the Tribunal has assessed the value on loss of dependency at Rs.35,84,000/-. Including the compensation payable under other conventional heads, the Tribunal had reckoned the total compensation payable at Rs.37,34,000/-. The Tribunal has fastened the liability entirely on the corporation which owned the bus involved in the accident.

1.3 Aggrieved by the said finding of the Tribunal fixing the entire negligence on the driver of the bus, the Corporation is now before this Court with this



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appeal.

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2. Mr.M.Murali Vinodh, the learned counsel for the appellant submitted that in an accident involving two vehicles which collided head-on, the Tribunal was singularly at fault in attributing the entire negligence on the driver of the bus. In fitness of things, the Tribunal ought to have apportioned a reasonable percentage of negligence on the victim of the accident. Turning to quantum, the learned counsel would submit that even though the claimants have produced Ex.P7 the salary certificate of the victim, and also attempted to prove it through P.W.2, the employer of the victim, yet it cannot be equated to a permanent job. Therefore, the Tribunal was wrong in relying on Ex.P.7 to determine the compensation amount on the head 'loss of dependency'.

3.Per contra, C.Prabakaran, the learned counsel for the claimants submitted that the victim was proceeding from Ariyalur to Sendurai, and while he was maintaining the lane discipline and was riding on the left hand side of the road, the driver of the bus belonging to the appellant crossed its lane and ran over the victim. The learned counsel submitted that if only the appellant is keen to shift



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part of the negligence, then the minimum the appellant should have done is to produce the rough sketch which the investigating agency has prepared while investigating into the criminal angle of the said accident in Cr.No.194 of 2019 of Senthurai Police Station. He added that the claimants are now producing the copy of the sketch vide C.M.P.28772 of 2023. Turning to the quantum awarded by the Tribunal, the learned counsel contended that the Tribunal has rightly assessed the earning capacity of the victim and justified the quantum awarded by the Tribunal.

4.It is not in dispute that the victim was proceeding from Ariyalur to Sendurai. It is also not in dispute that the offending bus has knocked him from the front. The only issue here is who is at fault to be more precise, whether the victim also had contributed to the accident through his negligence. Here, the rough sketch prepared by the investigating agency in Cr.No.194 of 2019 is critical. This is the earliest document prepared by an agency of the Government, and in the absence of any proof to the contrary, this document can be safely relied on. Hence, this Court chooses to mark it as Ex.P.21.



5. This document shows that the accident has taken place in the extreme left hand side of the road, more particularly, in the line of motion of the motorcycle.

The sketch also shows that the road at the point is curved and very apparently a bus coming from the opposite direction, if it does not maintain the correct speed to control the vehicle, will have a natural tendency to move to the other track while negotiating the curve. That precisely appears to have happened in the manner of the accident taken along with the Ex.P.21 is considered. This Court now has little to doubt the finding of the Tribunal that the driver of the bus is singularly responsible for the accident and confirms the finding on negligence by the Tribunal.

6. Turning to quantum, while the learned counsel for the appellant made a strong statement that Ex.P.7 should not be relied, this Court considers to rely on it since it at least indicates the earning ability of the victim. No job in the private sector can be considered as a permanent job, but that does not *ipso facto* imply every employment should be considered as temporary. Inasmuch as Ex.P.7 makes a point on the earning capacity of the victim on the relevant time, it was only appropriate that the Tribunal has chosen to rely on it. Viewed thus,



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this Court does not find anything to interfere with the sum awarded by the Tribunal as compensation.

7. To conclude, despite the valiant effort of the learned counsel for the appellant, this Court does not find any merit in the appeal to warrant interference.

8. Accordingly, this Civil Miscellaneous Appeal stands dismissed. The appellant and the fourth respondent is now required to deposit the entire compensation amount awarded by the Tribunal to the credit of MCOP.No.6665/2019 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of ten (10) weeks from the date of receipt of a copy of this judgment. No Costs. Consequently, the connected miscellaneous petition is closed.

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Index : Yes/No
Speaking order/non-speaking order
Anu



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The Motor Accident Claims Tribunal
/Chief Judge Small Causes Court,
Chennai.



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N.SESHASAYEE, J.

Anu

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