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C.M.A. No. 1848 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

PRONOUNCED ON : 16.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 1848 of 2021
and C.M.P. No. 9903 of 2021

1. The Superintendent of Police,
Krishnagiri.
 2. The District Collector,
Krishnagiri
- ... Appellants / Respondents 1 & 2

Vs.

1. Chinnaval
 2. Thirumal
 3. Boopal
 4. Sakthi
 5. Allimuthu
- ... Respondents / Petitioners

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 21.04.2015 passed in M.C.O.P. No. 201 of 2014 (M.C.O.P. No. 745 of 2012 of the Principal District Judge, Dharmapuri) on the file of the Special District Judge, Motor Accident Claims Tribunal, Dharmapuri.



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For Appellants : Mr. M.R. Gokul Krishnan
(Additional Government Pleader)

For RR 1 to 4 : Mr. M. Selvam

For R5 : No Appearance

JUDGMENT

This Civil Miscellaneous appeal has been filed by the first respondent in the claim petition, challenging the award in the Judgment and Decree passed in M.C.O.P. No. 201 of 2014 (M.C.O.P. No. 745 of 2012 of the Principal District Judge, Dharmapuri), dated 21.04.2015 on the file of the Special District Judge, Motor Accident Claims Tribunal, Dharmapuri, wherein the Tribunal has directed the first respondent to pay the compensation of Rs.10,16,000/- along with interest @ 7.5% per annum.

2. For the sake of convenience, the parties are referred herein according to their litigative status and rank before the Tribunal.

3. The claimants are the legal heirs of the deceased Citi Babu and



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their case is that on 04.07.2012 at about 7:00AM, the deceased Citi Babu was riding a TVS XL two wheeler bearing Registration No. TN-24-AC-8385 on the Dharmapuri to Krishnagiri main road, at that time, a tempo traveller, which belongs to the first respondent bearing Registration No. TN-24-G-0067 came behind the deceased in rash and negligent manner, hit on the two wheeler of the deceased, which resulted in causing severe injuries to him and he succumbed to injuries. A criminal case was also registered against the driver of the first respondent vehicle in Cr. No.1100/2012 under section 279, 304(A) of I.P.C. At the time of accident, he was aged about 45 years and he was mason by profession. Due to the loss of deceased Citi Babu, the claimants who are the wife and children of the deceased Citi Babu has filed a claim petition seeking compensation for a sum of Rs.15,00,000/-.

4. The first respondent filed a counter and contended that the deceased has ridden the two wheeler on the Dharmapuri to Krishnagiri main road and while he attempted to turn on the right side of the road, by overtaking a private bus, the deceased has hit on the lorry, which was parked in the road, hence, the tempo traveller belongs to the first respondent was not involved in the accident and thereby disputed the manner in which



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the accident has taken place. The respondent has also disputed the age, income and dependency of the claimants.

5. Before the Tribunal, the first claimant was examined as P.W.1 and the eye witness to the occurrence namely Rangan was examined as P.W.2 and Exs.P.1 to P.7 were marked. On the side of the respondent, the driver of the Tempo Traveller was examined as R.W.1 and no exhibits were marked.

6. Based on the evidence placed on record, the Tribunal in point no.1, has held that the driver of the tempo traveller is the tortfeasor and the first respondent is liable to pay the compensation to the claimants. In point no.2, the Tribunal has quantified and granted compensation for a sum of Rs.10,16,000/- along with the interest @ 7.5% per annum from the date of filing of petition till the date of realization.

7. Aggrieved over the finding that the Driver of tempo traveller belongs to the first respondent is tortfeasor and to set aside the same, this appeal has been filed by the respondent.



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8. Mr. M.R. Gokul Krishnan, Additional Government Pleader appearing for the respondent has submitted that the first respondent vehicle was not involved in the accident and the same has been falsely implicated in the F.I.R., which was marked as Ex.P.1 and the driver of the Tempo Traveller was also examined as R.W.1, but his evidence was not properly appreciated by the Tribunal, hence prays to set aside the finding of the Tribunal that the driver of the first respondent vehicle is a tortfeasor.

9. Per contra, the learned counsel appearing for the claimants has submitted that the first respondent is the Superintendent of Police and their vehicle was involved in this accident and in the F.I.R., it is clearly stated regarding the manner in which the accident has taken place and apart from that, the P.W.2, the eye witness to the occurrence was also examined, whose evidence disproved the evidence of R.W.1. Hence, the Tribunal has rightly held that the driver of the first respondent vehicle is the tortfeasor and so, the first respondent is liable to pay the compensation, hence, prays to confirm the award of the Tribunal.



10. Heard the submissions made on both sides and perused the materials placed on record.

11. Before the Tribunal, the P.W.2, one Rangan, who is the eye witness to the occurrence has deposed that he was running a workshop near the place of occurrence and on 04.07.2012, at about 7:00AM, the deceased Citi Babu, who is known to him was coming from Old Dharmapuri to Krishnagiri road in a TVS XL two wheeler bearing Registration No. TN-28-AC-8385 and while the two wheeler reached near his shop just opposite to Dharmapuri Government Higher Secondary School, a tempo traveller belongs to the Police Department bearing Registration No. TN-24-G-0067 came behind the deceased in high speed without blowing horn and dashed on the two wheeler of the deceased, which resulted in causing severe injuries to the deceased. He also further stated that, after the occurrence, he assisted in shifting the deceased to the Government Medical College Hospital. The averments regarding the manner in which the accident has occurred has been placed on record by way of F.I.R, which is marked as Ex.P.1.



12. To contra the evidence of P.W.1, the driver of the Tempo

Traveller was examined as R.W.1 and he has deposed that he has driven the tempo traveller vehicle with due care and caution and stated that on 03.07.2012 at about 8:30PM, as per the request of the Inspector of Police, Hosur Town, some prisoners were brought to various Courts in the van and later they have been transported back to Salem Central Prison. After transferring the custody of the various accused to the Central Prison, he drove back to Krishnagiri and on 04.07.2012 at about 7:00AM, when he reached near Dharmapuri Girls Government Higher Secondary School, a rider of the two wheeler bearing Registration No. TN-28-AC-8385 was overtaking a bus without showing any signal suddenly came in the opposite direction. To avoid accident, he has stopped the tempo traveller vehicle. However, the two wheeler driver lost his control and hit on the lorry, which was parked nearby and sustained injuries. The injured was taken to the Government Hospital in the police vehicle for treatment. The driver of the first respondent has also admitted that a criminal case was also registered against him and he was acquitted in the trial. In the cross examination, he was not able to give description regarding the lorry alleged to be involved in the accident. He stated that the Police Department vehicle was falsely



implicated.

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13. Admittedly, in this case, the F.I.R. was registered against R.W.1, who is a driver of Police Department. Even though, he stated that their vehicle is falsely implicated and the deceased hit on the lorry, which was parked in the road, act of the Police who have not taken steps to register the case against the alleged lorry and the fact the F.I.R. was registered against the Police Department vehicle, supports the evidence of the eye witness is more probable and acceptable than the evidence of R.W.1. The Tribunal has categorically held that the evidence of R.W.1 is not reliable and rejected the same. This Court finds no infirmity in such finding of the Tribunal. The acquittal of R.W.1 in the criminal case is not sufficient to throw away the case of the claimants, in this proceedings as held by the Hon'ble Apex Court in *N.K.V. Bros. (P) Ltd. Vs. M. Karumai Ammal and Ors. [AIR 1980 SC 1354]* and Division Bench of this Court in *Oriental Insurance Co. Ltd. Vs. K. Balasubramanian and Ors. [2008 ACJ 2553 : 2007 (2) TNMAC 399]* and in *Tamil Nadu State Transport Corporation vs. P. Shanthi and others [CMA.No.1369/2017, dated 28.04.2017]*, hence, this appeal has no merit and the same is liable to be dismissed.



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14. In the result, this Civil Miscellaneous Appeal is dismissed and the award of the Tribunal is hereby confirmed. The first respondent in the claim petition, who is appellant herein is directed to deposit the compensation amount awarded by the Tribunal along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P. No. 201 of 2014 (M.C.O.P. No. 745 of 2012 of the Principal District Judge, Dharmapuri) on the file of the Special District Judge, Motor Accident Claims Tribunal, Dharmapuri. On such deposit, the claimants are permitted to withdraw the award amount along with interest and costs, less the amount if any, already withdrawn. The Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Account of the claimants. Consequently, connected civil miscellaneous petition stands closed. There shall be no order as to costs in the present appeal.

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Index: Yes/No

Speaking Order: Yes/No



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Neutral Citation Case: Yes/No

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K. RAJASEKAR, J.

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To:

1. The Speical District Judge,
Motor Accident Claims Tribunal,
Dharmapuri.
2. The Section Officer,
V.R.Section,
High Court, Chennai.

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