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C.M.A.No.2605 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.06.2023

CORAM

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No.2605 of 2019
and C.M.P.No.12566 of 2019

The Managing Director,
Metropolitan Transport Corporation Ltd.,
Pallavan House, Anna Salai,
Chennai – 2.

.. Appellant

Versus

1.Krishnaveni
2.Minor Chandru
3.Kamalam
4.Shankar
5.The Bajaj Alliance General
Insurance Co., Ltd.,
Chennai.

.. Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree of the Motor Accidents Claims Tribunal, Principal District Judge, Villupuram, made in M.C.O.P.No.560 of 2008 dated 27.07.2015.

For Appellant : Mr.M.Murali Vinod
Standing Counsel

For Respondents
For R1 to R3 : Mr.T.D.Dhanyakumar
For R4 : Died
For R5 : M/s.V.Menaka



C.M.A.No.2605 of 2019

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JUDGMENT

The Civil Miscellaneous Appeal has been filed against the Judgment and Decree of the Motor Accidents Claims Tribunal, Principal District Judge, Villupuram, made in M.C.O.P.No.560 of 2008 dated 27.07.2015.

2. The Metropolitan Transport Corporation is the Appellant herein, filed the above appeal challenging the award passed by the Tribunal in M.C.O.P.No.560 of 2008 on the ground of quantum as well as negligence.

3. The first respondent is the wife of the deceased, the second respondent is the minor son of the deceased and the third respondent is the mother of the deceased filed the claim petition for the death of her husband in a road accident on 11.02.2008. For the sake of convenience, the parties are referred to as per their ranking before the trial Court.

4. The factum of the accident is not in dispute, however, the manner of the accident is in dispute in this appeal.



C.M.A.No.2605 of 2019

WEB COPY

5. During the trial, on the side of the claim petitioner P.W.1 and P.W.2 were examined and Exs.P1 to P7 were marked and on the side of the respondents R.W.1 to R.W.3 were marked and Exs.R1 to R3 were marked.

6. After going through both oral and documentary evidence, the Tribunal came to conclusion that the accident has taken place due to the rash and negligent driving of the driver of the appellant / Transport Corporation and the 4th respondent. The appellant alone is not responsible for the accident, the 4th respondent had also contributed to the cause of accident and hence, the Tribunal fixed the liability at 75% on the part of the appellant and 25% on the part of the 4th respondent. Aggrieved by the same, the appellant Transport corporation has preferred this appeal.

7. According to the appellant, on 11.02.2008, at about 6.00 p.m, when the deceased Soundarajan was standing near the bridge, the 4th respondent, driver of the lorry, insured with the 5th Insurance Company, came in a rash and negligent manner, without using horn and hit the deceased, in the impact he was fell down into the road and the 4th respondent's vehicle back tire ran over



C.M.A.No.2605 of 2019

the deceased and immediately he was taken to the Government Hospital, Villupuram and thereafter, the deceased was referred to Government Hospital, Chennai, but on the way he died. From the above averment in the petition and evidence it is clearly reveals that due to injuries caused by the 4th respondent in a motor vehcie, the deceased died. But the Tribunal erred in holding that the driver of the appellant bus drive the bus in a rash and negligent manner and was responsible for the accident by discarding the evidence of R.W.1. The Tribunal erroneously fixed the negligence at 75% on the part of the appellant and only 25% on the part of the 4th respondent. Hence, the accident occurred only due to the rash and negligent act of the 4th respondent. The Tribunal awarded compensation under various heads which are highly excessive and the same has to be reduced.

8. The learned counsel for the respondents, on the other hand submitted that the Tribunal has rightly fixed the negligence on the part of the appellant and awarded a fair and reasonable compensation and hence, it does not require any modification.



C.M.A.No.2605 of 2019

WEB COPY

9. On the point of quantum, after going through the oral and documentary evidence, the Tribunal awarded a sum of Rs.7,64,000/- under various heads as compensation, which appears to be just and reasonable and it does not warrant any interference by this Court and the same are hereby confirmed.

10. On the point of negligence, the Tribunal fixed 75% liability on the part of the appellant / Transport Corporation and 25% on the part of the 4th respondent, which appears to be unreasonable, since the deceased already sustained grievous injuries by the 4th respondent vehicle. Considering the facts and circumstances and on perusal of Ex.P1, FIR copy in Crime No.103 of 2008, Ex.P2, MVI report and Ex.R1, FIR copy and Ex.R2, rough sketch, this Court comes to the conclusion that the Tribunal wrongly fixed 75% : 25% ratio on the part of the parties and that the alleged accident was also occurred due to the negligence of the 4th respondent vehicle insured with 5th respondent Insurance Company and hence, this Court is inclined to fix (65% : 35%), 65% on the part of the appellant and 35% on the part of the 4th respondent.



C.M.A.No.2605 of 2019

WEB COPY

11. Accordingly, the contributory negligence fixed by the Tribunal is hereby modified from 75:25% to 65:35% ratio and accordingly, Rs.4,96,600/- (65%) is fixed on the part of the appellant / Transport Corporation and Rs.2,67,400/- (35%) is fixed on the part of the 4th respondent.

12. In fine,

(i) this Civil Miscellaneous Appeal stands partly allowed to the extent indicated above and the contributory negligence is fixed at the ratio of 65 : 35 among the appellant / Transport Corporation and the 4th respondent. Accordingly, the compensation awarded by the Tribunal Rs.7,64,000/-shall stands unaltered. The rate of interest awarded by the Tribunal remains in tact. No Costs. Consequently, connected miscellaneous petition is closed.

(ii) the Appellant Transport Corporation is directed to deposit the 65% of the award amount i.e., Rs.4,96,600/- and the 5th respondent, being the insurer of the 4th respondent is directed to deposit 35% of the award amount i.e., Rs.2,67,400/- before the Tribunal, within a period of six weeks from the date of receipt of a copy of this order, less the amount, if any already deposited.



C.M.A.No.2605 of 2019

WEB COPY

(iii) On such deposit being made, the claimants are permitted to withdraw their share in the award amount with proportionate accrued interest and costs, as per the ratio of apportionment made by the Tribunal, less the award amount, if any, already withdrawn, by filing necessary application before the Tribunal. The share of the minor shall be kept in an interest bearing fixed deposit in any of the Nationalized bank, till he attains majority. The 1st claim Petitioner/1st respondent, who is the guardian of minor, is permitted to withdraw the interest from the deposit of the minor once in every three months.

(iv) the claim Petitioners are directed to pay the court fee, if any, for the compensation amount and the Registry is directed to draft the decree only after the receipt of Court fee.

26.06.2023

Internet : Yes/No
Speaking Order/Non-Speaking Order
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To

The Presiding Officer,



C.M.A.No.2605 of 2019

Motor Accidents Claims Tribunal (Principal District Judge),
Chennai.

A.A.NAKKIRAN, J.

ata

C.M.A.No.2605 of 2019

26.06.2023