



C.M.A(MD)No.1042 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

C.M.A(MD)No.1042 of 2023

and

C.M.P.(MD) No.14174 of 2023

Tamil Nadu State Transport Corporation Ltd.,
Erode, through its General Manager, ... Appellant

.VS.

1.R.Rengathilagam

2.Minor R.Srivarshan

3.Minor R.Sivanesan

4.Mariammal

5.Gurusamy ... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the M.V.Act, 1988, to set aside the award and decree made in MCOP.No.150 of 2019 dated 03.09.2022 on the file of the Motor Accident Claims Tribunal/Additional District and Sessions Judge, Srivilliputtur.

For Appellant :Mr.P.Prabhakaran

For Respondents :Mr.V.R.Shanmuganathan



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JUDGMENT

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This appeal is filed challenging the liability and quantum of compensation awarded in MACOP.No.150 of 2019 on the file of the Motor Accident Claims Tribunal (Additional District and Sessions Judge), Virudhunagar.

2.The claim petition was filed by the respondents 1 to 3/claimants stating that on 16.01.2017, the deceased was riding a two wheeler bearing Reg.No.TN 84 3903 from Srivilliputhur to Madurai. The owner of the vehicle, Perumal was the pillion rider. When they travelled at Tatankulam road following the road rules, the bus bearing Reg.No.TN 33 N 2926, which was coming from T.Kallupatti to Srivilliputhur, came in a rash and negligent manner and dashed against the two wheeler. As a result, both the rider and the pillion rider suffered injuries. The rider, namely, the deceased Murugan @ Rajamurugan, suffered extensive head injuries and other injuries and died due to the injuries.

3.The first respondent is the wife of the deceased. The respondents 2 and 3 are their children. The deceased was rearing milch animals and



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was selling milk. He was earning Rs.15,000/- per month. After the death of the deceased, the respondents 1 to 3 find it very difficult to meet their day-to-day requirements. Thus, the claim petition was filed seeking compensation of Rs.15,00,000/-.

4.This claim was resisted by the appellant/Transport Corporation by filing counter stating that at the time of accident, the rider of the two wheeler had come on the wrong side of the road and hit against the bus. The accident had happened only because of the rash and negligent riding of the two wheeler rider and not because of the driving of the Transport Corporation Driver. The occupation and monthly income projected by the first respondent is denied.

5.During the enquiry before the Tribunal, P.W1 and P.W2 were examined and Ex.P1 to Ex.P.11 were marked. R.W1 was examined and no document was marked on the side of the appellant/Transport Corporation. On considering the oral and documentary evidence produced, the Tribunal fixed the compensation at Rs.13,06,060/-. Challenging the liability and quantum, this appeal is filed.



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6.It is the submission of the learned counsel appearing for the appellant that it is apparent from the manner in which the accident had happened, the deceased alone was responsible for the accident by driving on the wrong side of the road. The pillion rider is the first person to speak about the accident, but he was not examined as a witness. It is doubtful whether P.W2 had seen the accident, but he had given evidence as if he had seen the accident. Fixing Transport Corporation Driver as the person responsible for the accident is not based on the correct evidence. He further submitted that there is no acceptable and legal evidence produced to show that the deceased was earning Rs.8,000/- per month. Without any basis, the learned Tribunal fixed the monthly income of the deceased at Rs.8,000/-. Thus, he challenges the award.

7.In response, it is the submission of the learned counsel for the respondents that P.W2 had given clear evidence as to the manner in which the accident had happened. He was travelling 20 ft., behind the deceased and had seen the accident. His evidence is not effectively challenged and no dent was made in his evidence with regard to the manner in which the accident had happened. The learned Tribunal taking into consideration all the relevant aspects including the fact that the



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deceased was not wearing the helmet, decided that the deceased had contributed to his death by 30%. 70% of the liability was fixed on the Transport Corporation Driver for the accident. The compensation awarded is just and appropriate and the liability fixed on the Transport Corporation is also correct. Thus, he prays for dismissal of this appeal.

8.Considered the rival submissions and perused the records.

9.It is true that the pillion rider was not examined as an eye witness. Even if the person is a pillion rider, there are chances that he might not have seen the accident, if he was otherwise engaged, like taking through cell-phone etc., Here, in this case, P.W2, who travelled 20 ft., behind the two wheeler of the deceased, was examined to prove the accident.

10.The reading of the order of the learned Tribunal shows that P.W2's evidence with regard to the manner in which the accident had happened has not created any doubt in the mind of the Court on his evidence. The Driver of the Transport Corporation bus bearing Reg.No TN 33 N 2926 was examined as R.W1. From his evidence, the learned



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Tribunal found that R.W1 has not alleged in the FIR that the deceased was in a drunken state or he was not wearing helmet. There is no medical evidence as well with regard to the fact that the deceased had consumed Alcohol.

11.It was also found that R.W1 has not stated in the complaint that he stopped the vehicle on seeing the deceased crossing the road and approaching the bus. But during the course of his evidence, he said so. This was the discrepancy, which had been taken note of by the learned Tribunal along with the evidence of P.W2 to come to the conclusion that the Driver of the bus was a tort-feasor. However, the Tribunal going by the medical evidence, the injuries caused to the deceased found that if the deceased wore the helmet, his death could have been avoided. Taking these factors into consideration, the Tribunal apportioned 30% contributory negligence on the part of the deceased. Going by the reasons given by the learned Tribunal, this Court finds that fixing the responsibility/negligence on the part of the Transport Corporation Driver at 70% and on the deceased at 30% is just and appropriate. There is no reason to interfere with regard to the liability aspect.



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12.With reference to the quantum of monthly salary fixed at Rs. 8,000/- per month against the claim of Rs.15,00,000/- per month, this Court going by the several judgments, especially the judgment of this Court in *Andal and others vs. Avinav Kannan and others* reported in **2019 (1) TN MAC 54(DB)** finds that Rs.8,000/- fixed as monthly income for the deceased considering his age and other factors is just and appropriate. The Tribunal taking into consideration all the relevant factors arrived at the total compensation of Rs.18,65,800/- and after deducting contributory negligence at 30%, awarded a sum of Rs. 13,06,060/- to the respondents 1 to 5/claimants. This, in the considered view of this Court, is just and appropriate and needs no interference.

13.In this view of the matter, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Index :Yes/No
Internet :Yes/No
NCC :Yes/No

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The Additional District and Sessions Judge,
Srivilliputtur.



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G.CHANDRASEKHARAN,J.

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