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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **07.12.2023**

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

C.M.A(MD)NO.1222 OF 2023

and

C.M.P(MD)No.16155 of 2023

The General Manager,
Tamil Nadu State Transport Corporation Limited,
Nagercoil. :Appellant/Respondent

.VS.

1.Kamalapadma

2.Emil Robert Singh

Sailatpriyagamary(died) : Respondents/Petitioners

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the award made in M.C.O.P.No.64 of 2019, dated 17.3.2019, on the file of the Motor Accidents Claims Tribunal-cum-Third Additional District Court, Tirunelveli.

For Appellant :Mr.Michael Heldon Kumar

For Respondents :Mr.S.Jayakumar
1 and 2

JUDGMENT

This Civil Miscellaneous Appeal is filed challenging the liability fixed on the driver of the appellant/Transport Corporation.



2.M.C.O.P.No.64 of 2019 was filed by the

respondents/claimants seeking compensation of Rs.30 lakhs for the death of the first appellant's son, the deceased Babu Antony Raj. It is seen from the claim petition that on 12.10.2018 at about 3.40p.m., the deceased was riding his motor cycle bearing Registration No. TN 75 AD 6712 along with his friend and when he was going near the road at Paloor-Nellikavilai, the transport Corporation bus bearing Registration No. TN 45 N 3389 driven by its driver in a rash and negligent manner came from the opposite direction, dashed against the two wheeler. As a result, the deceased sustained grievous injuries and died. The claimants are his mother and siblings. They are depending upon the income of the deceased for their livelihood and due to the sudden demise of the deceased, they lost his love and affection and financial support to the family. Hence the claim petition.

3.The appellant/Respondent filed a counter stating that the transport corporation driver drove the bus bearing Registration No.TN 45 N 3389 in Thengaipattinam-Karungal road near Paloor Nellikavilai DJS Cement Kattai Company. The two wheeler bearing Registration No. TN 75 AD 6712 came from the opposite direction in a rash and negligent manner and in an effort to overtake the



vehicle which was going in front of the two wheeler, the two wheeler driver came on the wrong side of the road ie, on the right side of the road and dashed against the bus. The two wheeler rider alone was responsible for the accident. The compensation claimed was excessive.

4. During enquiry, P.W.1 and P.W.2 are examined and Ex.P1 to Ex.P6 were marked. No oral or documentary evidence was marked on the side of the appellant/respondent.

5. On going through the oral and documentary evidence, the learned Tribunal found that the transport corporation driver was 60% responsible for the accident and the deceased was 40% responsible for the accident. Of the compensation awarded at Rs. 11,87,396/-, after deducting 40% ie., Rs.4,74,958/-, the claimants were awarded a sum of Rs.7,12,438/-.

6. The appeal is filed mainly challenging the apportionment of liability. It is the submission of the learned counsel for the appellant that the way in which the accident had happened, it is apparent that the deceased had mainly contributed to the accident. However, the learned Tribunal instead of fixing maximum liability on the



deceased, had wrongly fixed the maximum liability on the transport Corporation bus driver. Thus this appeal.

7.The learned counsel for the respondents 1 and 2 satisfied with the apportionment of liability and supported the award passed by the Tribunal.

8.This Court considered the rival submissions made on either side and perused the materials placed before this Court.

9.It is seen from the records that the First Information Report was registered against the deceased stating that he had contributed to the accident by overtaking the vehicle which was going in front of him and hitting against the bus. Merely because FIR was registered against the deceased, it cannot be conclusively decided that the deceased was only responsible for the accident. Admittedly, the accident had happened in a straight road. It is claimed that the deceased while trying to overtake the vehicle which was going in front of him, hit against the bus driver. Had the bus driver been vigilant and driving the bus with a steady speed, the impact of the accident would have been low and the death could have been avoided.



10. Taking into consideration all these relevant factors, this Court is of the view that it is just and appropriate that the transport Corporation driver and the deceased are held 50% each responsible for the accident and in this view of the matter, this Court fixed the liability at 50% each on the transport Corporation driver and the deceased, for the accident. Since the quantum of compensation is not challenged, this Court does not want to disturb the same. Instead of Rs.7,12,438/- the respondents/claimants are entitled to Rs.5,93,699/- with proportionate accrued interest as ordered by the learned Tribunal.

11. Accordingly, the Civil Miscellaneous Appeal is allowed in part with the above modification. The award payable by the appellant transport Corporation is modified and reduced from Rs. 7,12,438/- to Rs.5,93,699/- with interest at the rate of 7.5% p.a from the date of claim petition till the date of realization. The appellant transport Corporation is directed to deposit the above said award amount with proportionate accrued interest and costs, less the award amount if any already deposited, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the first respondent/first claimant is entitled to a sum of Rs.4,93,699/- and the second respondent/second claimant



is entitled to a sum of Rs.1,00,000/- with proportionate accrued interest and costs, less the award amount if any already received, by filing necessary application before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

07.12.2023

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

To

- 1.The Third Additional District Judge
(Motor Accidents Claims Tribunal),
Tirunelveli.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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G.CHANDRASEKHARAN,J.

vsn

JUDGMENT MADE IN
C.M.A(MD)NO.1222 OF 2023
and
C.M.P(MD)No.16155 of 2023

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