



C.M.A(MD)No.1105 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

C.M.A(MD)No.1105 of 2023

and

C.M.P.(MD) No.14933 of 2023

Tamil Nadu State Transport Corporation,
Bye Pass Road,
Madurai,
through its
the Managing Director.

... Appellant

.VS.

Ramar

... Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the M.V.Act, 1988, to set aside the award dated 11.10.2022 passed in MCOP.No.473 of 2019 on the file of the Motor Accident Claims Tribunal (Special District Judge), Madurai.

For Appellant :Mr.K.Sudalaiyandi



C.M.A(MD)No.1105 of 2023

JUDGMENT

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This appeal is filed challenging the award passed in MCOP.No. 473 of 2019 on the file of the Motor Accident Claims Tribunal (Special District Judge), Madurai.

2.It is seen from the petition averments that the deceased, Ganesan, was riding a two wheeler bearing Reg.No.TN 67 AH 8942 on 23.10.2018 in Kariapatti-Aruppukottai main road. The bus bearing Reg.No.TN 58 N 1128 was going in front of him. At about 03.40 pm., near Anna Salai Villaku, the bus driver had applied sudden break without any warning, resulting in the deceased dashing the bus from behind. As a result, the deceased suffered extensive injuries and died on 12.11.2018. The deceased was working as mason and was earning a sum of Rs.25,000/ per month. The deceased was a bachelor and the claimant is the only legal heir and dependant of the deceased. Thus, the claim petition was filed claiming compensation of Rs.20,00,000/-.

3.The respondent filed a counter stating that the driver of the bus bearing Reg.No.TN 58 N 1128 stopped the bus near Karisalkulam Vilakku at about 03.45 pm., for the passengers to get down from the bus.



C.M.A(MD)No.1105 of 2023

After the passengers got down from the bus, he moved the bus. At that point of time, the rider of the two wheeler bearing Reg.No.TN 67 AH 8942 came in a rash and negligent manner and dashed the bus from behind. At the time of accident, he was under the influence of Alcohol and was not wearing the helmet. The accident had happened only due to the rash and negligent riding of the two wheeler rider. The compensation claimed is also excessive.

4.On considering the oral and documentary evidence, namely the evidence of P.W1, P.W2 and R.W1 and Ex.B1 to Ex.B11, the learned Tribunal found that both the bus driver and two wheeler rider had contributed to the accident in the ratio of 40% and 60% respectively and awarded compensation at Rs.13,60,200/-, directing the appellant to pay 40% of the amount ie., Rs.5,44,080/- to the respondent as compensation. This appeal is filed challenging the liability fixed and the quantum awarded on the ground that the deceased was alone responsible for the accident and the compensation awarded is also excessive.

5.It is not in dispute that in an accident involving the bus bearing Reg.No.TN 58 N 1128 and the two wheeler bearing Reg.No.TN 67 AH



C.M.A(MD)No.1105 of 2023

8942 at about 03.30 pm., at Karisalkulam Vilakku on 23.10.2018, the deceased suffered extensive injuries and died. It is also not in dispute that the deceased had dashed the bus from behind. *Prima facie* it appears that the deceased was responsible for the accident. The case of the appellant is that when the transport corporation driver after giving time for the passengers to get down from the bus in Karisalkulam Vilakku and slowly moved the bus, the deceased had come from behind in a rash and negligent manner, under the influence of Alcohol, without wearing the helmet and dashed behind the bus. In contra to this, the case of the respondent is that the bus driver had suddenly applied the break without any forewarning and that resulted in the deceased dashing from behind the bus.

6.The Tribunal on considering the oral and documentary evidence, especially the evidence of P.W2, the eye witness to the accident, found that the transport corporation driver had suddenly applied the break resulting in the deceased dashing the bus from behind. To counter this evidence, except the evidence of R.W1, it appears that no other independent witness was examined. In the said circumstances, though the FIR was registered against the rider of the two wheeler, from the



C.M.A(MD)No.1105 of 2023

evidence of P.W1 and P.W2, the manner in which the accident had happened, the Tribunal arrived at a conclusion that the accident had happened because of applying the sudden break by the respondent corporation driver.

7.The learned Tribunal had also found that the deceased had also contributed to the accident by dashing the bus from behind and thus, fixed the responsibility for causing the accident at 60% on the deceased and at 40% on the transport corporation driver. Considering the evidence produced and the reasonings given by the Tribunal for arriving at this conclusion, this Court is of the view that the Tribunal had taken a correct decision with regard to the responsibility for the accident and this finding requires no reconsideration and accordingly, the finding of the learned Tribunal fixing the responsibility at 60% on the deceased and at 40% on the transport corporation driver for the accident is confirmed.

8.Then, coming to the quantum of compensation fixed, the Tribunal fixed the monthly income of the deceased at Rs.9,000/- and on that basis, relying on the judgment of *National Insurance Company Co Ltd., Vs. Pranay Sethi and others* reported in *2017(2) TNMAC 609(SC)*,



C.M.A(MD)No.1105 of 2023

added 40% of this amount for future prospectus and fixed the monthly income of the deceased at Rs.12,600/- (Rs.9,000/- + Rs.3,600/-). As per the judgment in ***Smt.Sarla Varma and others Vs. Delhi Transport Corporation and another*** reported in **2009 (5) LS 561**, multiplier of 17 was adopted and 50% of the amount arrived is deducted towards personal expenses of the deceased and thus, arrived at compensation of Rs. 12,85,200/- [Rs.12,600/- – Rs.6,300/- = Rs.6,300/- X 12 X 17] towards loss of dependency. Apart from this, a sum of Rs.40,000/- was awarded towards loss of consortium, Rs.5,000/- was awarded towards transport charges, Rs.15,000/- was awarded towards funeral expenses and Rs. 15,000/- was awarded towards loss of estate and thus, the total compensation of Rs.13,60,200/- was awarded. Out of this amount, 60% of the amount was deducted towards contributory negligence on the part of the deceased and arrived at a sum of Rs.5,44,080/-. Considering the age of the deceased, this Court is of the view that fixing the monthly income at Rs.9,000/- and calculating the loss of dependency and thus, arriving at the compensation awarded, in the considered opinion of this Court, is just and appropriate. It does not require any interference from this Court.



C.M.A(MD)No.1105 of 2023

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9. In this view of the matter, this Court finds that there is no valid ground made out for interfering with the award passed by the Tribunal and it is confirmed. In fine, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

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

07.11.2023

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To

The Special District Judge,
Madurai.



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C.M.A(MD)No.1105 of 2023

G.CHANDRASEKHARAN,J.

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C.M.A(MD)No.1105 of 2023

07.11.2023