



C.M.A(MD)No.1106 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.1106 of 2023

and

C.M.P.(MD) No.15123 of 2023

The Branch Manager,
TNSTC,
Ondiputhur Branch II,
Coimbatore 641 016.

... Appellant

.VS.

1.Duraipandi

2.Amirtham

3.Natarajan

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the M.V.Act, 1988, to set aside the award made in MCOP.No.2197 of 2021 dated 27.07.2023 on the file of the Motor Accident Claims Tribunal/Special District Court (MACT), Madurai.

For Appellant :Mr.P.Prabhakaran



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JUDGMENT

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This appeal is filed challenging the award passed in MCOP.No. 2197 of 2021 on the file of the Motor Accident Claims Tribunal, Special District Court, Madurai.

2.The respondents 1 and 2 filed MCOP.No.2197 of 2021 stating that on 16.08.2021 at about 08.15 pm., the respondents 1 and 2's son, Sathish and his relative, Karuppusamy, who was the pillion rider, had travelled in a Bullet Motor Cycle and the deceased was riding the two wheeler and waited to cross the Madurai-Dindigul National Highways-7. At that point of time, the respondent corporation bus bearing Reg.No.TN 38 N 3315 came from south-north direction in a rash and negligent manner, came in the wrong side of the road (wrong way) and dashed against the deceased and pillion rider. As a result, the deceased suffered serious injuries and died on the spot. The deceased, Sathish was owning a tea shop and earning a sum of Rs.25,000/- per month. He has mainly contributed to the income of the respondents 1 and 2. After his death, the respondents 1 and 2 lost their son and also his support through financially and emotionally. Thus, the claim petition was filed claiming compensation of Rs.30,00,000/-.



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3.The appellant filed a counter stating that the accident had happened due to the rash and negligent act of the two wheeler rider in crossing the main road with high speed without noticing the oncoming bus in a highway. It was stated that the driver of the bus bearing Reg.No.TN 38 N 3315 had taken the bus at 07.40 pm., from Madurai to Coimbatore. At about 08.25 pm.,when it was nearing Ayyankottai, the two wheeler bearing Reg.No.TN 59 BT 3404 crossed the main road with high speed without noticing the oncoming bus from the branch road and hit the right hand guard in front of the bus. Thus, it is clear that the accident had happened only because of the rash and negligent riding of the two wheeler. It is also contented in the counter that the deceased had no driving licence for riding the two wheeler and was not wearing the helmet at the time of the accident. The owner and Insurance Company of the two wheeler bearing Reg.No.TN 59 BT 3404 were not impleaded as respondents. That apart, the compensation claimed is excessive.

4.On considering the oral and documentary evidence, namely P.W1, P.W2, and R.W1 and Ex.P1 to Ex.P9, the Tribunal found that the accident had happened because of the rash and negligent driving of the



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transport corporation driver and awarded compensation of Rs. 14,75,800/-.

5.The learned counsel appearing for the appellant reiterating the stand taken in the counter affidavit submitted that the accident had happened because of the sudden crossing into the National Highway from the cut road by the rider of the two wheeler. However, the Tribunal, on the wrong appreciation of evidence, fixed the responsibility for the accident on the transport corporation driver. The other grounds taken are that the deceased had no driving licence; that he did not wear helmet at the time of the accident; and that the owner and the Insurance Company of the two wheeler had not been impleaded as respondents.

6.It is seen from the oral and documentary evidence produced, the respondents 1 and 2 examined P.W1, P.W2 and R.W1. P.W2 is an eye witness to the accident and R.W1 is the transport corporation driver. Both stick to their stand with regard to the manner in which the accident had happened as narrated in the petition averments and counter averments respectively. It is the case of the respondents 1 and 2 from the petition averments that the transport corporation driver, while driving the



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bus from south-north direction in NH-7 near Ayyankottai, had driven the bus on the wrong side of the road (wrong way) and dashed against the two wheeler. It is seen from the counter affidavit of appellant that when the transport corporation driver was driving the bus from south-north, the two wheeler rider had crossed the road in high speed without noticing the oncoming bus and hit on the right hand guard in front of the bus.

7.In the National Highway, there would always be a centre-median. Therefore, it is not possible for the two wheeler rider to cross the centre-median and dash the bus on its right hand guard. Only if the bus had gone on the wrong side of the north side road, ie., on the west side of the road, the two wheeler rider entering from the western cut road, had the possibility of hitting on the right hand guard in front of the bus. Therefore, from the available evidence, this Court could only take the case of the respondents 1 and 2 with regard to the manner in which the accident had happened as true i.e., the bus driver had come on the wrong side of the road and hit against the two wheeler, when the two wheeler rider tried to enter or waited for entering the main road. Thus, this Court is of the view that there is no need to interfere with the findings of the learned Tribunal with regard to fixing the liability and responsibility for



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the accident on the transport corporation driver.

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8. With regard to the submission of the learned counsel for the appellant that the deceased had no driving licence at the time of the accident and he was not wearing helmet, except the interested testimony of R.W1, there is no other witness examined to show that the deceased had no driving licence at the time of the accident or that he was not wearing the helmet. Therefore, this submission cannot be accepted. Similarly, with regard to the submission that the owner and Insurance Company of the two wheeler bearing Reg.No.TN 59 BT 3404 have not been impleaded as respondents, it is a settled proposition of law that the claimants can proceed against any one of the tortfeasor vehicles involved in the accident. In the case before hand, the claimants/respondents 1 and 2 have filed the claim petition against the appellant for the reason that the transport corporation driver alone was responsible for the accident. In the said circumstances, not impleading the owner and Insurance Company of the two wheeler rider cannot be faulted.

9. Coming to the quantum of compensation, when the respondents 1 and 2 claimed in the claim petition that the deceased was earning Rs.



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25,000/- as a tea shop owner, the Tribunal, on considering the age of the deceased and other relevant aspects, fixed the notional income of the deceased at Rs.9,000/- per month. For the accident happened in the year 2021, fixing Rs.9,000/- per month as notional income for the deceased, considering his age and other relevant aspects, in the considered view of this Court, cannot be considered as excessive. With this amount, the Tribunal relying on the judgment of the Hon'ble Supreme Court in ***National Insurance Company Vs. Pranay Sethi*** reported in **2009 (2) TNMAC 1**, added 40% towards future prospectus and thus, arrived at a sum of Rs.12,600/- (Rs.9,000/- + Rs.3,600/-) and then, relying on the judgment of this Court in ***Smt.Sarla Verma and others Vs. Delhi Transport Corporation and another*** reported in **2009 (2) TN MAC 1 (SC)**, deducted 50% of the amount towards personal expenses of the deceased for the reason that he was a bachelor and thus, arrived at the monthly loss of income of the deceased at Rs.6,300/-. Adopting the multiplier of 24 x 18, the Tribunal awarded at Rs.13,60,800/- towards loss of income (Rs.6,300/- x 12 x 18). Apart from this, sum of Rs. 80,000/- was awarded towards loss of filial consortium, Rs.15,000/- was awarded towards funeral expenses, Rs.15,000/- was awarded towards loss of estate and Rs.5,000/- was awarded towards transport expenses.



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The compensation awarded under various heads is in tune with the settled proposition of law. Therefore, this Court is of the view that there is no need to reconsider the quantum of compensation awarded as well. Thus, this Court finds that there is no need to interfere with the award passed by the learned Tribunal and 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

07.11.2023

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To

The Special District Judge,
Madurai.



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G.CHANDRASEKHARAN,J.

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