



C.M.A. No.2987 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.01.2024

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

Civil Miscellaneous Appeal No.2987 of 2021

and

Civil Miscellaneous Petition No.17013 of 2021

The Managing Director,
Tamil Nadu State Transport Corporation,
(Villupuram—Divn. 1) Ltd.,
No.3/137, Salamedu, Vazhuthareddy post,
Villupuram-605 402.

... Appellant / Respondent

Vs.

1. Dhakshnamoorthy
2. D.Dhanalakshmi
3. D.Narmatha
4. D.Nivedha

... Respondents /Petitioners

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 21.01.2021 passed in M.C.O.P. No.4375 of 2018 on the file of the Motor Accident Claims Tribunal, I Additional District and Sessions Court, Cuddalore.

For Appellant : Mr.Sivakumar

For Respondents : M/s.Ramya v. Rao

JUDGMENT



C.M.A. No.2987 of 2021

This Civil Miscellaneous Appeal has been filed by the appellant-Transport Corporation, challenging the liability and also challenging the quantum of compensation fixed by the Tribunal in the Award passed in M.C.O.P.No.4375 of 2018, dated 21.01.2021 on the file of the Motor Accidents Claims Tribunal, I Additional District and Sessions Court, Cuddalore.

2. The appellant – Transport Corporation is the respondent in M.C.O.P.No.4375 of 2018 on the file of the Motor Accidents Claims Tribunal, I Additional District and Sessions Court, Cuddalore.

3. On 09.07.2018, while the deceased was riding his two-wheeler namely, Yamaha FZ motorcycle bearing Registration No.TN 40 L 9398 on the Cuddalore to Poondiyankuppam from North to South direction, near Uppanaru Bridge, a Bus bearing Registration No.TN 32 N 3880 came in the same direction in rash and negligent manner and dashed against the deceased which resulted in causing fatal injuries to the deceased. Immediately he was admitted into the Jipmer Hospital, Puducherry, after discharge he died in the hospital on 14.07.2018. The dependents, who are the parents and sisters of the deceased have filed claim petition claiming



C.M.A. No.2987 of 2021

compensation of Rs.30,00,000/- for the death of the deceased.

WEB COPY

4. The Tribunal in Point No.1 has considered the point of negligence and based on the evidences placed on record has held that the driver of the bus belongs to the appellant is a tortfeasor, hence the appellant is liable to pay compensation to the claimants. The Tribunal quantified and awarded a sum of Rs.12,04,000/- along with interest at the rate of 7.5% per annum.

5. Aggrieved over the above finding of negligent act against the driver of the bus, this appeal has been filed by the Transport Corporation.

6. The grievance of the appellant herein is that the deceased is the tortfeasor in this case namely Naveenraj and without properly appreciating the evidence of bus driver, the Tribunal has held that the driver of the bus is responsible for the accident. The deceased was hit by a car and due to contributory negligence of deceased, the appellant is not liable to pay compensation.



C.M.A. No.2987 of 2021

7. Per Contra, the learned counsel for the claimants submitted that Tribunal, based on the evidences placed on record held that the driver of the bus is responsible for the accident and there is no infirmity in the said finding and prays to confirm the award. The learned counsel further stated that the claimants have separately filed the appeal for enhancement of compensation and the same was also partly allowed in M.C.O.P.No.1975 of 2021, dated 20.03.2023.

8. I have considered the rival submissions made on both sides and also perused the records available.

9. To prove the occurrence, P.W.2, eyewitness to the occurrence, stated that the deceased was riding his two wheeler from North to South direction on moderate speed on the left side of the Cuddalore to Poondiyanakuppam Road, while he reached near Uppanaru Bridge, the bus was proceeding on the left hand side of the road, the deceased was trying to overtake the bus and at that time, the driver of the bus has increased the speed and dashed on the two wheeler.

10. R.W.1 in his evidence has stated that at the time of



overtaking the bus, the deceased hit on the car and sustained injuries and he has stated that there was no contact between the bus and the two wheeler.

The bus was subjected to the Motor Vehicle Inspection, and it was found that the front side of the bus sustained damages and this evidence corroborates the evidence of P.W.2. Further, the police have also investigated the case and Final Report also filed against the bus driver stating that the bus driver has suddenly moved on the middle of the road and hit on the two-wheeler, while overtaking the bus. Since the evidence of P.W.2 is more probable than the evidence of R.W.1, the Tribunal has considered the case of the claimants and held that the driver of the bus is responsible for the accident.

11. The Tribunal has held that the standard of proof requires for proving accident in the claim petitions is preponderance of probabilities and strict proof of proving the negligence is not requisite for claiming compensation based on the principle laid down in ***Bimla Devi & Ors vs. Himachal Road Transport Corporation & Ors [AIR 2009 SC 2819 : 2010 (1) SCC (CRI) 1101]***.



12. As discussed supra, this Court agrees with the finding of the Tribunal and the negligent contributed against the driver of the bus is more probable than the evidence adduced on the side of the respondents. Hence, the finding of the Tribunal is hereby confirmed. As far as the quantum of compensation is concerned, this Court has already decided that the just compensation to be awarded in favour of the claimants in C.M.A. No.1975 of 2021.

13. In the result, the Civil Miscellaneous Appeal filed by the Transport Corporation is dismissed. The Award and Decree passed by the Tribunal in M.C.O.P.No.4375 of 2018, dated 21.01.2021, by the Motor Accidents Claims Tribunal, I Additional District and Sessions Judge, Cuddalore is hereby confirmed. The appellant – Transport Corporation is directed to deposit the amount, awarded by the Tribunal along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.4375 of 2018 on the file of the Motor Accidents Claims Tribunal, I Additional District and Sessions Judge, Cuddalore. On such deposit, the claimants are permitted to withdraw the award amount along



C.M.A. No.2987 of 2021

with interest and costs, less the amount if any, already withdrawn, as per the apportionment fixed by the Tribunal. In other aspects, the award of the Tribunal shall stand confirmed. There shall be no order as to costs in the present appeal. Consequently, the connected miscellaneous petition stands closed.

09.01.2024

ssi

Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No

To:

1. The I Additional District and Sessions Judge,
Motor Accident Claims Tribunal,
Cuddalore.
2. The Section Officer,
V.R.Section,
High Court,
Chennai.

K. RAJASEKAR, J.

ssi



WEB COPY



C.M.A. No.2987 of 2021

C.M.A. No.2987 of 2021

09.01.2024