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1

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.12.2024

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.3308 of 2021

The Regional Manager
Andhrapradesh State Road Transport Corporation Ltd.,
Chittoor, Kuppam Depot. .. Appellant

Vs.

1. S.Sathiya
2. Minor Jayapriya
3. R.Sasikala @ Shashikala .. Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, to set aside the order dated 18.11.2020 in MCOP. No.1052 of 2019 on the file of the Motor Accidents Claims Tribunal, District Court for MCOP Cases, Krishnagiri.

For Appellant : Mr.G.V.Shoba
For Respondents : No appearance

J U D G M E N T

The Insurance company is the appellant herein has filed this appeal seeking to quash the order dated 18.11.2020 in MCOP. No.1052 of 2019 on the file of the Motor Accidents Claims Tribunal, District Court for MCOP Cases, Krishnagiri.



2. It is the case of the claimants that on 07.03.2018, the deceased Sadhasivam was proceeding in his TVS 50 XL bearing Reg. No.TN 29 R 2531 as rider from Kuppam – Krishnagiri Road, at that time, a APSRTC bus bearing Reg. No.AP 03 Z 0047 which was driven by its driver in a rash and negligent manner and came on the opposite direction of the said TVS 50 vehicle and dashed against the said vehicle, due to that impact, the deceased had sustained fatal injuries and died on the spot. The accident was occurred only due to the rash and negligent driving of the driver of the said bus. Thereafter, the claimants have filed a Claim Petition before the Motor Accident Claims Tribunal, against the Transport Corporation claiming Rs.50,00,000/- as compensation under various heads.

3. During the trial before the Tribunal, on the side of the claimants, there were two witnesses examined and marked 7 documents viz., Exs.P1 to P7. On the side of the insurance company, one witness was examined and no documents were marked.

4. The Tribunal, considering the pleadings, oral and documentary evidence, allowed the petition in part and awarded a sum of Rs.18,43,600/--



as compensation to the claimants and the Tribunal has fastened 90% negligence as against the transport company and 10% negligence as against the deceased. Questioning negligence, the appellant/transport corporation has filed this appeal before this Court.

5. The learned counsel for the appellant submitted that the Tribunal has passed the award totally based on the evidence of PW1 and PW2 and Ex.P1 FIR and came to the wrong conclusion that the appellant's drivers rash and negligent driving is cause for the accident. At that time of the accident, the deceased has no valid license to drive the two wheeler and was also not wearing the helmet. Due to the negligence of the deceased, the accident had happened. Further the Insurance Company of the two wheeler and owner of the two wheeler were not made as necessary parties in the claim petition. Without considering the fact, the Tribunal has directed the transport corporation to pay 90% award to the claimants which is unsustainable. Further, in respect of the quantum, the Tribunal has awarded the compensation which was excessive. Therefore, the learned counsel prays that this Court may set aside the award passed by the Tribunal by allow this petition.



6. The learned counsel appearing for the claimants submitted that after examining the witnesses and considering the materials, the Tribunal has rightly awarded compensation to the claimants, which does not warrant any interference.

7. Heard the learned counsel for appellant and the learned counsel for respondents 1 to 4.

8. This Court carefully considered the submissions made on either side and the materials available on record.

9. This Court also carefully went through the award passed by the Tribunal.

10. The transport corporation has preferred this appeal mainly questioning the negligence aspect on the ground that there was contributory negligence on the part of the deceased, which was not considered by the tribunal.



11. The main ground that was urged by the learned counsel for the appellant was that the rider of the two wheeler did not have a valid driving license and there was no proof to show that he was wearing an helmet and it was not established that the two wheeler was covered by any insurance policy. To substantiate his submission, the learned counsel relied upon the evidence of PW2.

12. In the considered view of this Court, the issue regarding the contributory negligence is not a matter of assumption and it has to be proved like any other fact based on the evidence that is let in before the Tribunal.

13. The mere allegation for non possession of a driving license or not wearing an helmet, by itself cannot lead to the assumption that there was contributory negligence. The Tribunal had taken into consideration the eye witness account of PW2, who clearly spoke about the manner in which the accident took place. That apart, the Tribunal also took into consideration the FIR that was registered against the driver of the appellant i.e. offending vehicle and also the final report that was filed by the police after the



completion of the investigation. The transport corporation did not take any effort to disprove the case of the claimants.

14. In the light of the above discussion, the finding of the Tribunal fixing 90% negligence on the driver of the offending vehicle, does not warrant the interference of this Court.

15. The quantum of compensation fixed by the Tribunal is also very reasonable and there is no scope for interfering with the same.

16. In the result, this Civil Miscellaneous petition is dismissed. The appellant Transport Corporation is directed to deposit the compensation amount as awarded by the Tribunal, less the amount already deposited, together with interest at 7.5% p.a. from the date of claim petition till the date of deposit within a period of four weeks from the date of receipt of this judgment. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered. No costs.

18.12.2024



Index : Yes

Speaking Order : Yes

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To

Motor Accidents Claims Tribunal, District Court for MCOP Cases,
Krishnagiri.



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8

M.DHANDAPANI,J.

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