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C.M.A.(MD)No.803 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 21.12.2023

Pronounced on : 22.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

C.M.A.(MD)No.803 of 2021

and

C.M.P(MD)No.7491 of 2021

The Managing Director,
The Tamil Nadu State Transport
Corporation (Salem) Limited,
No.12, Ramakrishna Road,
Salem District.

... Appellant/2nd Respondent

Vs.

1.T.Muruganantham
2.M.Mageswari
3.Subasri

... Respondent Nos.1 to 3/

Petitioners

4.R.Senthilkumar

... 4th Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, against the judgment and decree dated 27.08.2020 passed in M.C.O.P.No.805 of 2019 on the file of the Motor Accident Claims Tribunal (Special District Judge), Thanjavur.

For Appellant : Mr.K.Sudalaiyandi

For R1 to R3 : Mr.P.Arun Jeyatram



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JUDGMENT

This Civil Miscellaneous Appeal is preferred against the Award dated 27.08.2020 passed in M.C.O.P.No.805 of 2019 by the Motor Accident Claims Tribunal/Special District Judge, Thanjavur.

2.The second respondent in M.C.O.P.No.805 of 2019 is the appellant herein.

3.The petitioners/claimants are respondents 1 to 3 herein, who filed the claim petition in M.C.O.P.No.805 of 2019.

4. For the sake of convenience, the parties arrayed in M.C.O.P.No. 805 of 2019 is adopted hereunder.

5. The brief facts of the case:

On 28.03.2018 at about 6.00 p.m. the deceased Vimalraj was riding his two wheeler bearing registration number KA 02 EJ 3450 along the Thanjavur - Kumbakonam road from south to north and when he was riding near Nedar bridge, the second respondent's bus bearing registration number TN 30 N 1173 driven by its driver/1st respondent in a rash and negligent



manner on the same direction dashed against the two wheeler. Due to impact the rider of the two wheeler sustained fatal injuries and was admitted in Government Hospital, Thanjavur, but died on 29.03.2018. Hence, the petitioners, who are dependants of the deceased Vimalraj, filed the claim petition seeking compensation of Rs.1,00,00,000/-.

6. The second respondent/Insurance Company objected the claim petition by contending that the accident took place on the sole negligence of the deceased Vimalraj, who had ridden his two wheeler in a rash and negligent manner and hit front side of the bus. The driver of the second respondent's bus is not responsible for the accident. Therefore, the petitioners are not entitled any claim from the second respondent.

7. Before the Tribunal, petitioners examined two witnesses as P.W.1 and P.W.2 and marked 19 documents as Ex.P.1 to Ex.P.19. On respondents side R.W.1 was examined, but no document was marked. After hearing both and after considering the evidences, the Tribunal Court has held negligence on the both drivers of the vehicle and fixed negligence 70% + 30%. The Tribunal has arrived loss of income at Rs.11,42,400/- and after deducting 30%, awarded compensation of Rs.7,99,680/- + Rs.15,000/- towards funeral expenses + Rs.15,000/- towards loss of estate and totally awarded Rs.8,29,680/- to the petitioners with interest and cost. Aggrieved by the



said award, the appellant/2nd respondent has preferred this Civil Miscellaneous Appeal.

8. Heard both side and perusal the records in this Civil Miscellaneous Appeal.

9. The learned counsel appearing for the appellant/2nd respondent has argued that the deceased was not wearing helmet at the time of accident and the F.I.R. was also registered against the deceased alone, not registered against the driver of the bus. This fact was not considered by the Tribunal. As per the Ex.A.9 – M.V.Report and the evidence of R.W.1, the accident was happened only due to rash riding of the two wheeler. Without considering these facts, the Tribunal has fixed liability of 70% + 30%. The ratio may be fixed 50% + 50%.

10. The learned counsel for the claim petitioners/respondents 1 to 3 herein, has contended that before the Tribunal the appellant/2nd respondent has not raised contention that the rider of the two wheeler had not worn helmet. The appellant/2nd respondent has taken different plea in the counter as well as in the evidence of R.W.1, which was discussed by the Tribunal and correctly fixed negligence 70% + 30%. Therefore, the compensation



awarded by the Tribunal need not be interfered. The Civil Miscellaneous Appeal may be dismissed.

11. On hearing both and on perusal of records, it is clear that the accident took place while the two wheeler came from west to east and the bus was came from south to north in the four way junction. Considering the evidences of both parties, the Tribunal has correctly appreciated the evidence in its order in paragraph No.10 and correctly fixed the negligence 70% + 30%. It is general settled principle that when two vehicles involved in accident, the biggest and larger vehicle is to be held responsible than the smaller one. In the evidence, the R.W.1 stated that when the deceased came from opposite direction, the bus was stopped and the two wheeler hit against the bus. Whereas in the complaint, it is stated that when the bus was running from opposite direction the two wheeler dashed against the bus. But, the fact remains, as per evidences and order of Tribunal, the bus and the two wheeler hit against each other. So, there is nothing wrong fixing in 70% + 30% negligence by the Tribunal and the same held correct. This Court is of the considered view that the negligence concluded by the Tribunal is sustainable and there is no need to interfere in it.

12. In respect of compensation, the Tribunal arrived compensation, on the basis of settled **Sarla Varma** case reported in **2009 (2) TNMAC 1**



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and **Pranay Sethi** case reported in **2017 (2) TNMAC 609 (SC)**. There is no dispute raised regarding age of the deceased 26 years at the time of accident. Though the petitioners claimed the deceased was earning Rs.30,000/- by doing agricultural work, in the absence of documents, the Tribunal correctly fixed notional income as Rs.8,000/- and added 40% future prospects and also correctly deducted 50% personal expenses as the deceased was bachelor. Therefore, the compensation awarded by the Tribunal is held correct and the same is not liable to be set aside.

13. In the result, this Civil Miscellaneous Appeal is dismissed and the award dated 27.08.2020 passed by the Motor Accident Claims Tribunal/Special District Court, Thanjavur in M.C.O.P.No.805 of 2019 is confirmed. No costs. Consequently, connected Miscellaneous Petition is closed.

22.02.2024

NCC : Yes / No
Index : Yes / No
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To

- 1.The Motor Accident Claims Tribunal
(Special District Judge), Thanjavur.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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P.VADAMALAI, J.

VSD

Pre - Delivery Judgment made in
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