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C.M.A.(MD)No.899 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 21.12.2023

Pronounced on : 15.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

C.M.A.(MD)No.899 of 2022

and

C.M.P(MD)No.5638 of 2023

1.The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
New Junction Road,
Kumbakonam Town,
Thanjavur District.

2.The Divisional Manager,
Divisional Office,
Tamil Nadu State Transport Corporation Ltd.,
(Kumbakonam),
Karanthai, Thanjavur Town.

... Appellants/Respondents

Vs.

1.Anjali Devi
2.Dhanalakshmi
3.Ganesh Moorthy
4.Gayathri
5.Minor Savithri

... Respondents/Petitioners

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree passed by the Motor Accident Claims Tribunal, Special District Court in M.C.O.P.No.1280 of 2019 dated 24.09.2021.



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C.M.A.(MD)No.899 of 2022

For Appellants : Mr.A.V.B.Krishnakanth

For Respondents : Mr.G.Karnan

JUDGMENT

This Civil Miscellaneous Appeal is preferred against the award dated 24.09.2021 passed in M.C.O.P.No.1280 of 2019 by the Motor Accident Claims Tribunal/Special District Court, Thanjavur.

2. The respondents in M.C.O.P.No.1280 of 2019 are the appellants herein.

3. The petitioners/claimants are respondents herein, who filed the claim petition in M.C.O.P.No.1280 of 2019.

4. For the sake of convenience, the parties arrayed in M.C.O.P.No. 1280 of 2019 is adopted hereunder.

5. The brief facts of the case:

On 15.06.2019 the deceased Murugaian and his sister Chellammal were travelling as passengers in the respondent's bus bearing registration number TN 68 N 0102 from Nagapattinam. While so, when the bus was



running from north to south in East Coast Road near Chamber of Commerce building at about 4.30 p.m. the deceased stood up and walked towards the seat where his sister was sitting, informed about purchase of ticket and returned to his seat, at that time the driver of the bus drove in a rash and negligent manner and the deceased fell down through footsteps and sustained fatal injuries and died on the way to hospital. The deceased was Mason and was earning Rs.25,000/- p.m. Hence, the petitioners, who are dependants of the deceased Murugaian, filed the claim petition seeking compensation of Rs.25,00,000/-.

6. The respondents/Transport Corporation objected the claim petition by contending that the deceased Murugaian, who was walking here and there in a moving vehicle and also stood near the front entrance without holding any grip in the bus and himself invited the accident. The driver of the 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 both side adduced oral and documentary evidence. On the side of the petitioners, two witnesses were examined as P.W.1 and P.W.2 and 18 documents were marked as Ex.P.1 to Ex.P.18. On



the side of the respondents, R.W.1 was examined, but no document was marked. After hearing both and after considering the evidence, the Tribunal has held negligence on the both driver of the vehicle and fixed negligence 75% + 25%. The Tribunal has arrived total compensation of Rs.12,47,000/- and after deducting 25% awarded compensation of Rs.9,35,250/- to the petitioners with interest and cost. Aggrieved by the said award, the respondents have 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 appellants/respondents has argued that the deceased, who travelled in the bus by standing near the front entrance and without holding proper grip in the moving bus and thereby lost his control and balance and invited the incident. The Tribunal erred in fixing major portion of 75% negligence against the driver of the respondents' bus. The income of the deceased was erroneously fixed at Rs.8,000/- in the absence of any proof of avocation.



10. The learned counsel for the respondents/claim petitioners has contended that the Tribunal after considering the F.I.R. registered against the driver of the bus and also the evidence adduced by both sides fixed negligence and correctly fixed negligence 75% + 25%. In fact, as per the latest settled principle of law, the income of the deceased would be fixed at Rs.12,000/-p.m. but fixed at Rs.8,000/- p.m., however, the petitioners have not preferred any appeal. 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 deceased was travelling in the bus TN 68 N 0102 itself and when the bus was plying along the road. On perusal of evidence of P.W.2 and R.W.1 and also on perusal of order of Tribunal, it is clear that the conductor or driver of the moving bus did not warn the deceased who was walking inside the moving bus and if he was warned, the incident would not occurred.

12. On perusal of records, FIR was registered against the driver of the respondents' bus. So, there is more negligence on the part of the driver of the bus as well as negligence on the part of the deceased. The



Tribunal has correctly fixed the negligence 75% + 25%. Whereas in the FIR, it is stated that the bus was driven by its driver in a rash and negligent and speedy manner. The respondents have not produced contra evidence for fixing negligence. So, there is nothing wrong fixing 75% + 25% 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.

13. In respect of compensation, the Tribunal arrived compensation, on the basis of settled **Sarla Varma case** reported in **2009 (2) TNMAC 1 and Pranay Sethi case** reported in **2017 (2) TNMAC 609 (SC)**. There is no dispute raised regarding the age of the deceased 48 years at the time of accident. Though the petitioners claimed the deceased was earning Rs.25,000/- by doing Mason work, in the absence of documents, the Tribunal correctly fixed notional income as Rs.8,000/- and added 25% future prospects and also correctly deducted 25% personal expenses as the deceased was family man. Therefore, the compensation awarded by the Tribunal is held correct and the same is not liable to be set aside.

14. In the result, this Civil Miscellaneous Appeal is dismissed and the award dated 24.09.2021 passed by the Motor Accident Claims



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Tribunal/Special District Court, Thanjavur in M.C.O.P.No.1280 of 2019

is confirmed. No costs. Consequently, connected Miscellaneous Petition
is closed.

15.03.2024

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

To

- 1.The Motor Accident Claims Tribunal/
Special District Court,
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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