
(2014) 09 MAD CK 0393

In the Madras High Court

Case No : Civil Miscellaneous Appeal Nos. 2507 and 2566 of 2014 and M.P. Nos. 1 and 1 of 2014

The Managing Director

APPELLANT

Vs

Akila

RESPONDENT

Date of Decision : 11-09-2014

Acts Referred:

Citation : (2014) 09 MAD CK 0393

Hon'ble Judges : R. Subbiah, J

Bench : Single Bench

Judgement

R. Subbiah, J.—Both the above appeals have arisen out of the common award passed by the Motor Accidents Claims Tribunal (Principal District Judge), Dharmapuri, in and by award dated 25.06.2013 in M.C.O.P. Nos. 105 & 106 of 2012, respectively. Hence, these appeals are disposed of by way of this common judgment.

2. The respondents 1 to 5 in C.M.A. No. 2507 of 2014 are the legal heirs of the deceased Anandhan and they had filed the claim petition in M.C.O.P. No. 105 of 2014 claiming a sum of Rs. 10 lakhs as compensation. The respondents 1 to 4 in C.M.A. No. 2566 of 2014 are the legal heirs of the deceased Soundarajan and they had filed the claim petition in M.C.O.P. No. 106 of 2014 claiming a sum of Rs. 10 lakhs as compensation.

3. It is the case of the claimants before the Tribunal that on 10.07.2011 at about 4.00 pm, the said Soundarajan was riding his two-wheeler bearing Registration No. TN-29-AY-2671, along with the said Anandhan as a pillion rider, from Santhapatti to Dharmapuri and while they were nearing Semmanahalli Granites Factory, a bus bearing Registration No. TN-57-N-1346 belonging to the appellant-Transport Corporation came from opposite direction in a rash and negligent manner and dashed against the two-wheeler and thus, caused the accused. In the said accident, the said Soundarajan had sustained head injury and he died on the way to the hospital and the said Anandhan also sustained grievous injuries

and died on the spot. Hence, the legal heirs of the deceased persons filed claim petitions in M.C.O.P. Nos. 105 & 106 of 2012 before the Tribunal claiming compensation as stated supra.

4. The claims made by the claimants were resisted by the Transport Corporation by filing a counter contending that at the time of accident, the bus bearing Registration No. TN-57-N-1346 belonging to the appellant was driven by its driver at a moderate speed and the rider of the two-wheeler bearing Registration No. TN-29-AY-2671 came from the opposite direction in an uncontrollable speed and turned the two-wheeler from left to right without caring the bus and on seeing the same, the driver of the bus turned the bus to the right side of the road in order to avoid the accident. But, in spite of the best efforts taken by the driver of the bus, the two-wheeler hit on the front side of the bus and thus, the two-wheeler got involved in the accident. Hence, according to the Transport Corporation, the accident had occurred only due to the negligent act of the rider of the two-wheeler and therefore, the Transport Corporation is not liable to pay the compensation amount.

5. In order to prove their case before the Tribunal, on the side of the claimants, the 1st claimant-Kavitha in M.C.O.P. No. 106 of 2012 examined herself as P.W. 1, the 5th claimant-Pappathi in M.C.O.P. No. 105 of 2012 examined herself as P.W. 2, besides examining one Rajendiran and one Chandrasekar as P.W. 3 & P.W. 4 respectively and marked eight document as Ex. P.1 to Ex. P.8. On the side of the Transport Corporation, the driver of the bus was examined as R.W. 1 and no document was marked.

6. The Tribunal, after analysing the entire evidence adduced on both sides, has come to the conclusion that the accident was the result of the rash and negligent driving of the driver of the bus and thus, fixed the liability on the part of the Transport Corporation to pay the compensation amount. Thereafter, the Tribunal has calculated the compensation amount under different heads and passed the award for a total sum of Rs. 7,36,500/- in respect of MCOP. No. 105/2012 (CMA. No. 2507/2014) and also passed the award for a total sum of Rs. 8,07,500/- in respect of MCOP. No. 106/2012 (CMA. No. 2566/2014). Aggrieved over the same, the present appeals have been filed by the Transport Corporation.

7. Now, it is the main submission of the learned counsel for the appellant/Transport Corporation that at the time of accident, the rider of the two-wheeler came in a rash and negligent manner and suddenly turned the two-wheeler from left to right without caring the bus, which was coming from the opposite direction; only due to the negligent act of the rider of the two-wheeler, the accident had occurred. In order to speak about the manner of the accident, the driver of the bus was examined as R.W. 1. But, the Tribunal, without considering the evidence of R.W. 1, has fixed the entire negligence on the part of the driver of the bus. Thus, the learned counsel for the appellant/Transport Corporation submitted that by setting aside the finding rendered by the Tribunal, the appellant/Transport Corporation may be exonerated from its liability to pay the

compensation or atleast, by fixing the contributory negligence on the part of the rider of the two-wheeler, the award amount may be reduced proportionately. Further, the learned counsel for the appellant/Transport Corporation submitted that quantum of compensation awarded by the tribunal is on the higher side and hence, proper reduction has to be made in the compensation amount.

8. The learned counsel for the claimants made his submissions supporting the award passed by the Tribunal.

9. Keeping the submissions made on either, I have carefully gone through the entire materials available on record and I find that in order to prove the rash and negligent aspect, on the side of the Transport Corporation, the driver of the bus was examined as R.W. 1, who is a self-interested witness. Except the driver of the bus, no other witnesses was examined on the side of the Transport Corporation. Whereas on the side of the claimants, R.W. 4, who was an eye witness to the occurrence, was examined to speak about the manner of accident. The Tribunal by placing reliance on the evidence of eye witness-R.W. 4, has fixed the entire liability on the part of the Transport Corporation. Further, I find that on the side of the appellant/Transport Corporation, crucial document such as accident-sketch was not marked before the Tribunal. Under such circumstances, I do not find any valid reason to rebut the finding rendered by the Tribunal that the accident had occurred only due to the rash and negligent driving of the driver of the bus. Hence, the said finding rendered by the Tribunal is hereby confirmed.

10. So far as the quantum of compensation is concerned, I find the Tribunal has passed the award for total sum of Rs. 7,36,500/- in respect of MCOP. No. 105/2012 (CMA. No. 2507/2014) and Rs. 8,07,500/- in respect of MCOP. No. 106/2012 (CMA. No. 2566/2014). Considering the facts and circumstances of the case, I am of the opinion the said amount of compensation awarded by the Tribunal cannot be said to be exorbitant, as the accident in this case is ended in fatal death. I do not find any reason for reducing the compensation amount awarded by the Tribunal. Hence, the appeals are liable to be dismissed.

11. In the result, the Civil Miscellaneous Appeals are dismissed. Consequently, connected Miscellaneous Petitions are closed. No costs.

12. The Transport Corporation is directed to deposit the entire compensation amount, as awarded by the Tribunal, after deducting the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this order. The claimants are entitled to their respective share amounts as apportioned by the Tribunal. On such deposit, except the claimants 2 & 3 in MCOP. 105/2012, who are the minors, the other claimants in both the claim petitions are entitled to withdraw their share amounts, by making necessary application before the Tribunal. The share amounts of the minor claimants 2 & 3 in MCOP. No. 105/2012 are directed to be deposited in any one of the nationalised banks till they attain majority and their mother/1st claimant is permitted to withdraw the interest accrued thereon once in three months.