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C.M.A.No.3760 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.02.2024

CORAM:

THE HONOURABLE Mrs.JUSTICE R.KALAIMATHI

C.M.A.No.3760 of 2013

The Managing Director,
T.N.S.T.C. Limited,
Periyarmilaguparai, Collector Office Road,
Tiruchirappalli. ... Appellant /2nd Respondent

vs.

1.Mrs.Fathurnisha
2.Minor Mohammed Facurdinn
3.Minor Mubena Begum
4.Minor Jannath Pradosh
5.Minor Mohammed Yusuf
6.Mrs.Jaidunbevi ... Respondents/Petitioners

[Minors are represented by
natural Guardian and mother
Mrs.Fathurunhisha]

7.Mr.P.Loganathan
(R7 - Given up) ... Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 08.07.2010 made in M.C.O.P.No.317 of 2008 on the file of Motor Accident Claims Tribunal / Fast Track Court, Namakkal.

For Appellant : Mr.Murali Vinodh
For R1 : Mr.C.Thangaraju



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For R2 to R5 : Represented by R1

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JUDGMENT

This Civil Miscellaneous Appeal has been filed by the Managing Director of Tamil Nadu State Transport Corporation Ltd., (Trichy Branch) against the judgment and decree dated 08.07.2010 passed in M.C.O.P.No.317 of 2008 on the file of the Motor Accident Claims Tribunal / Fast Track Court, Namakkal as regards the liability issue.

2. The claim petition was filed under Section 166 of Motor Vehicles Act for the death of Abubakkar who died in a road accident that occurred on 30.08.2007.

3. The learned Tribunal after evaluating the evidence concluded that the accident occurred due to the rash and negligent driving of the driver of TNSTC bus and passed an award for a sum of Rs.8,98,200/- with interest at 7.5% per annum from the date of petition till the date of deposit.

4. The learned counsel for the appellant / Transport Corporation would vehemently contend that the driver of the tractor was not examined. The driver of the appellant-Corporation bus used the horn at the time of



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occurrence. The tractor driver had parked the tractor with trailer unnecessarily in a narrow road. Therefore, it is only the tractor driver is responsible for the accident and not the driver of the appellant-Transport Corporation. The compensation granted is on the higher side.

5. Per contra, the learned counsel appearing for the respondents 2 to 5 strenuously argued that because of the negligent driving of the driver of the respondent-Transport Corporation, the accident occurred which is evident from the records that it is the driver of the Corporation bus who hit on the tractor and in-turn, the tractor dashed on the deceased. Therefore, it is incorrect on the part of the appellant, to contend that it is only because of the tractor driver, the accident happened. It is his further argument that the deceased died at the age of 35 years and he was selling soap oil and phenyl and earning Rs.7,000/- p.m. The Tribunal fixed the age of the deceased as 38 years and by adopting multiplier "16" and by fixing monthly income at Rs.5,000/-, for loss of Income Rs.6,40,000/- was granted. The learned counsel further contended that for the other heads also the amount granted by the Tribunal are reasonable, as the deceased left seven legal heirs in all, and prayed for dismissal of the appeal.

6. Heard the arguments of the learned counsels appearing for both



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sides and perused the entire materials available on record.

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7. At trial, on the claimant side, wife of the deceased Abubacker, was examined as PW1 and five documents were marked. Post-mortem certificate of the deceased is Ex.P4. On the respondent side no witness was examined.

8. It is the evidence of PW1, wife of the deceased Smt.Fathurunisha that on 30.08.2007, at about 11.25 a.m., while her husband was standing in front of his house situate at Namakkal-Thuraiyur main road, Erumapatti, the TNSTC bus bearing Reg.No.TN-45-N-1542 came in a rash and negligent manner and hit on the tractor which was stationed on the left side of the road and the tractor in turn moved and hit on the deceased and dragged him to some extent, thereby the injured died at the hospital on 09.09.2007.

9. Mr.Murali Vinod, learned counsel appearing for the appellant/Transport Corporation stoutly contended that no eye witness was examined to prove the factum of the accident. It is relevant to note that the accident occurred in front of the house of the deceased. It is the categorical evidence of PW1 that she was standing at the entrance of the



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house and she witnessed the accident. PW1 has also admitted the fact that at the time of accident, the driver of the bus was using the horn.

10. As PW1 is the ocular witness to the accident, the contention of the learned counsel for the appellant that no ocular witness was examined in order to prove the negligence has no force. Apart from the said fact, from the evidence of PW1, it is inferable that it is only due to the rash and negligent driving of the TNSTC Bus, accident happened and therefore, for the negligent act of the driving of the driver of TNSTC bus, the said Transport Corporation is liable to pay compensation.

11. As per the claim petition, the deceased age has been mentioned as 35 years. The Tribunal relying upon the age details found in post-mortem report, Ex.P4, fixed the age of the deceased as 38 years. As regards the income of the deceased, PW1, wife of the deceased has stated that he was earning a sum of Rs.7,000/- p.m., and he was doing soap oil and phenyl business and the Tribunal has fixed the income of the deceased at Rs.5,000/- which is not on the higher side.

12. The 1st claimant, is the wife and the claimants 2 to 5 are the children of the deceased. 6th claimant is the mother of the deceased. For



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loss of love and affection, the Tribunal has granted Rs.60,000/-. For loss of consortium to the wife of the deceased, Rs.25,000/- has been granted.

For Funeral Expenses, an amount of Rs.5,000/- has been granted. As regards the medical expenses as per Ex.P6 Bills, an amount of Rs.1,68,217.50 has been granted by the Tribunal. Therefore, the total compensation awarded is Rs.8,98,217/-, rounded off to Rs.8,98,200/-. The above said details considering the age, income of the deceased appears to be reasonable and needs no interference.

13. As per the law laid down by the Hon'ble Supreme Court in ***National Insurance Co. Ltd., Pranay Sethi and others*** reported in **2017 (2) TN MAC 609 (SC)**, for loss of consortium to the claimants, an amount of Rs.2,15,000/- is granted apart from the amount already granted by the Tribunal. An amount of Rs.15,000/- is granted for loss of estate. In all other aspects, the award of the Tribunal appears to be reasonable and needs no interference. Therefore, the Compensation awarded by the Tribunal is reworked as tabulated below:

Sl. No.	Description	Amount awarded by Tribunal	Amount awarded by this Court	Award confirmed or enhanced or granted or reduced
1	For Loss of Income	Rs. 6,40,000/-	Rs.6,40,000/-	Confirmed



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Sl. No.	Description	Amount awarded by Tribunal	Amount awarded by this Court	Award confirmed or enhanced or granted or reduced
2	For Loss of Love and Affection	Rs. 60,000/-	Rs. 60,000/-	Confirmed
3	For Loss of Consortium	Rs. 25,000/-	Rs.2,15,000/-	Enhanced
4	For Funeral Expenses	Rs. 5,000/-	Rs. 5,000/-	Confirmed
5	For Medical Expenses	Rs.168,217.50	Rs.168,217.50	Confirmed
6	For Loss of Estate	NIL	Rs. 15,000/-	Granted
	Total	Rs.898,217.50	Rs.1,103,217.50	
	Rounded off to	Rs.8,98,200/-	Rs.11,03,000/-	

14. Thus, the compensation awarded by the Tribunal is enhanced from **Rs.8,98,200/-** to **Rs.11,03,000/-** which would carry interest at the rate of 7.5% per annum.

15. In the result,

(i) The Civil Miscellaneous Appeal is Dismissed. No costs.

(ii) The compensation awarded by the Tribunal is enhanced from **Rs.8,98,200/-** to **Rs.11,03,000/-**.

(iii) The Appellant / Transport Corporation is directed to deposit the enhanced compensation amount i.e., **Rs.11,03,000/-** (less the amount already deposited if any) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of realisation to the credit of M.C.O.P.No.317 of 2008 on the file of Motor Accident Claims



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Tribunal / Fast Track Court, Namakkal, within a period of eight weeks from the date of receipt of a copy of this Judgment.

(iv) On such deposit being made, the claimants are at liberty to withdraw the same as per the apportionment made by the Tribunal, along with interest and costs, less the amount if any already withdrawn, by making necessary cheque application before the Tribunal. The claimants are directed to pay the Court fee for the enhanced compensation amount, if required. The Tribunal below shall disburse the enhanced amount upon production of the certified copy showing proof of payment of Court fee by the claimants.

26.02.2024

Index : Yes/No
Speaking / Non-speaking order
ssn

R.KALAIMATHI, J.,

ssn

To:

1. The Motor Accident Claims Tribunal,
Fast Track Court, Namakkal.
2. The Section Officer,
V.R.Section,
High Court of Madras,
Chennai.

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