

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.11.2015

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THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.2538 of 2015

and

M.P.No.1 of 2015

The Managing Director,
Tamil Nadu State Transport
Corporation,
Villupuram.

... Appellant/Respondent

vs.

1.Kuppayee

2.Minor Manikandan

3.Minor Velayutham

4.Govindan

5.Anjalai

Respondents/Claimants

(2nd & 3rd Respondent Minor by their
Natural Guardian & Mother 1st Respondent
Kuppayee)

Civil Miscellaneous Appeal filed under Section 173
Motor Vehicles Act, 1988 against the Judgment and decree dated
18.04.2015 passed in M.C.O.P.No.165 of 2013, on the file of the
Motor Accident Claims Tribunal/Subordinate Court, Kallakurichi.

Mr.P.Paramasiva Doss

For Appellant :

JUDGMENT

This Appeal is directed against the Judgment and
decree dated 18.4.2015 in M.C.O.P.No.165 of 2013 passed by the
Motor Accident Claims Tribunal/Subordinate Court, Kallakurichi,
awarding a sum of Rs.9,99,000/- as compensation as against the
claim of Rs.10,00,000/-.

2. On 23.12.2012 at about 19.20 hours, when the deceased was travelling near Palapattu Bus Stop, on the Bus belonging to the the appellant Transport Corporation bearing Reg.No.TN-32-N-2155, the driver of which drove the Bus in a rash and negligent manner and as a result, the deceased was thrown out from the bus thereby causing death. A criminal case was registered by Sankarapuram Police Station in Crime No.887/2012 against the driver of the Transport Corporation Bus. The claimants claimed a sum of Rs.10,00,000/- as compensation.

3. The learned counsel appearing for the appellant Transport Corporation assailing the impugned award would submit that it is a clear case of contributory negligence from the side of the deceased. At the time of the accident, the deceased was travelling in the Foot Board of the Bus from where he fell down as he was under intoxication and as a result, he died. Knowing well that he was not in a normal condition, both the conductor and the driver of the bus repeatedly asked him to come inside the bus to have a seat as many seats were lying vacant since at that time there were no many passengers travelling therein. Continuously ignoring the requests made by the driver and conductor of the bus, the deceased continued to travel in the bus and as a result, when the bus was moving forward with ups and downs, he fell down unable to bear the jolt caused by the moving vehicle. Adding further, the learned counsel appearing for the appellant submitted that though the claimant was working only as a mason, the Tribunal has wrongly fixed the notional monthly income of the deceased as Rs.6,000/-. Though these point were urged before Tribunal, without considering the same, the Tribunal proceeded to pass the award for a sum of Rs.9,99,000/- with interest 7.5% p.a. from the date of petition till the date of deposit. Therefore, the appellant was prejudiced by the award of compensation.

4. This Court is unable to find any merit in the contention made by the learned counsel appearing for the appellant Transport Corporation. Firstly, though the learned counsel for the appellant Transport Corporation has contended that the deceased was under intoxication, before the Tribunal, the driver of bus was examined as RW.1 and he has not stated during his examination that the deceased was under intoxication and the deceased was repeatedly asked by him and the conductor to come inside the bus. Apart from that, the post-mortem certificate of the deceased was marked as Ex.P.2 dated 24.12.2012. The post-mortem certificate also does not state that the deceased was under intoxication at the time of the accident. Therefore, the contention of the learned counsel for the appellant that the deceased was under intoxication at the

time of the accident and he was travelling in the Foot Board of the bus and as a result, he fell down from the bus has to be rejected. The other contention of the learned counsel for the appellant is that the monthly income of the deceased was fixed erroneously. In the claim petition, it is stated that the deceased was earning a sum of Rs.7,000/- per month. However, the Tribunal, considering the fact that the deceased was working as a mason and mason earns at least a sum of Rs.500/- per day, after excluding holidays, the Tribunal fixed the monthly income of the deceased as Rs.6,000/-. Based on the judgment rendered in Sarla Verma and others vs Delhi Transport Corporation and another ([2009] 6 SCC 121), after deducting 1/4th towards his personal expenses, the remaining 3/4th of the monthly income has been taken into account and on that basis, by applying the proper multiplier of 16, arrived at a sum of Rs.8,64,000/- (Rs.4,500 X 12 X 16) towards pecuniary loss. Therefore, this determination cannot be found fault. Similarly, the amount awarded under various other heads are also found to be just and reasonable and as per the ratio of the decisions of this Court as well as the Hon'ble Supreme Court. Therefore, this Court is not inclined to interfere with the impugned judgment and decree.

5. In the result, the Appeal is dismissed. The connected Miscellaneous Petition is closed. No costs.

6. The appellant / Transport Corporation is directed to deposit the entire award amount, with interest and costs, less the amount already deposited, to the credit of M.C.O.P.No.165 of 2013, on the file of the Motor Accident Claims Tribunal/Subordinate Court, Kallakurichi within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the claimants/respondents 1, 4 and 5 are permitted to withdraw the entire amount as per their share by filing proper application before the Tribunal. The order of the Tribunal in respect of the minor claimants 2 and 3 is also sustained.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

asvm

To

The Motor Accident Claims Tribunal/
Subordinate Court, Kallakurichi.

+1 cc to Mr.P.paramasivadoss, Advocate, sr.65334

sv co, kra 27.01.2016

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