

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.12.2015

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THE HONOURABLE MR. JUSTICE T.RAJA

C.M.A.No.2636 of 2015

and

M.P.No.1 of 2015

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

... Appellant/Respondent

Vs

1.Rajendran
2.Poongodhai
3.Chandrarekha
4.Minor Rithish
(R4 Minor rep. by his mother and
guardian R3)

... Respondents/Claimants

Prayer: This Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 30.04.2015, made in M.C.O.P.No.268 of 2014 on the file of the Motor Accident Claims Tribunal, District Court, Nagapattinam.

For appellant : Mr.K.J.Sivakumar

JUDGMENT

This appeal is filed against the judgment and decree dated 30.04.2015, made in M.C.O.P.No.268 of 2014, on the file of the Motor Accident Claims Tribunal, District Court, Nagapattinam.

2. On 29.04.2014 at about 3.50 p.m., while the deceased was going in his two wheeler from south to north near Eazhai Pillaiyar Koil, Raja Thirumana Mandapam, Nagapattinam-Nagor Road, the appellant transport Corporation bus bearing Registration No.TN-01-AN-0435 driven by its driver in a rash and negligent manner dashed against the motor cycle of the deceased Ramesh and that the bus ran over his stomach and he died on the spot. Immediately after the accident, the First Information Report was registered against the driver of the bus. The deceased Ramesh was a T.V. Mechanic and was earning a sum of Rs.500/- to Rs.1000/- per day. The respondents 1 and 2 are parents and the third respondent is wife and the fourth respondent is son of the deceased Ramesh. They have filed the

claim petition claiming a sum of Rs.25,00,000/- as compensation for the death of the deceased Ramesh.

3. After considering the oral and documentary evidence, the Tribunal held that the accident had occurred only due to the rash and negligent driving of the driver of the transportation Corporation and awarded a sum of Rs.9,20,000/- with interest at 7.5% per annum. Aggrieved by the same, the appellant Transport Corporation has filed the present appeal.

4. Learned counsel appearing for the appellant/Transport Corporation questioned only the quantum of compensation awarded by the Tribunal and thereby he contended that the amount awarded by the Tribunal is excessive, exorbitant and without any justification. He further submitted that the learned Tribunal ought not to have considered the evidence of P.W.2 who is an eye witness to the occurrence. It is further submitted that mere registration of FIR against the driver of the transport Corporation is not enough in fixing negligence against the driver of the bus, for, the deceased Ramesh alone invited the accident by overtaking the bus after hitting against the Car. Hence, with these submissions, he prayed for quashing the impugned award passed by the Tribunal.

5. This Court is unable to accept the above said contention of the learned counsel for the appellant. From the materials available on record, it is not in dispute that the bus belonging to the appellant transport corporation involved in the said accident and this has been admitted by the driver - RW1. The only contention of the appellant that the deceased Ramesh only invited the accident by overtaking the bus after hitting the Car. If such being their contention, they ought to have taken steps to examine the driver of Car, however, they did not do so. Therefore, by taking note of FIR filed against the driver of the bus and also taking note of deposition of PW2 - an eye witness to the accident, the Tribunal has rightly held that the accident had occurred only due to the rash and negligent driving of the driver of the bus. Hence, the above said contention of the appellant that the accident had occurred due to the overtaking of the rider of the motorcycle, cannot be sustained.

6. At the time of accident, the deceased Ramesh was aged about 34 years and was a T.V. Mechanic. According to the claimants, he was earning a sum of Rs.500/- to Rs.1000/- per day, however, to substantiate the same, they have not produced any documents. Therefore, the Tribunal has fixed Rs.6000/- as his monthly income and thereafter, after deducting 1/3rd i.e. Rs.2000/- towards his personal expenses, the Tribunal has arrived Rs.48000/- (4000 x 12) towards annual loss of income to the family. The Tribunal has fixed 17 as multiplier by taking note of his age, however, in my view, it ought to have taken 16

as multiplier in view of Sarla Verma v. Delhi Transport Corporation ((2009) 6 SCC 121). Hence, Rs.8,16,000/- (48000 x 17) awarded by the Tribunal towards loss income to the family is modified to Rs.7,68,000/- (48000 x 16) by adopting 16 as multiplier as per Sarla Varma's case (cited supra).

7. Further, the Tribunal has awarded a sum of Rs.20,000/- towards loss of consortium, Rs.20,000/- each towards loss of love and affection, which, in my view, require to be modified, in view of the fact that the respondent - wife was aged about only 28 years at the time of accident. Had the deceased not died in the accident, he would have lived for full span of his life and would have contributed substantially to his family by working hard, hence, this Court, by applying the principles of just and reasonable compensation, hereby awards a sum of Rs.50,000/- towards loss of consortium and Rs.25,000/- each towards loss of love and affection. The Tribunal has also further awarded a sum of Rs.4,000/- towards funeral expenses, which, in my view, is just and reasonable compensation and the same is hereby confirmed.

8. In fine, for the reasons stated above, the present Civil Miscellaneous Appeal fails and the same is dismissed. The appellant-Transport Corporation is directed to deposit the entire award amount of Rs.9,22,000/- to the credit of MCOP No.268 of 2014 on the file of the Motor Accident Claims Tribunal, District Court, Nagapattinam, less the amount already deposited if any, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants are permitted to withdraw the entire award amount along with accrued interest therein as apportioned by the learned Tribunal, by moving appropriate application. No Costs. M.P.No.1 of 2015 is closed.

Sd/-

Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

rkm
To
The District Judge,
(Motor Accident Claims Tribunal)
Nagapattinam.

+1cc to Mr.K.J. Sivakumar, Advocate, S.R.No.65618

KSJ(CO)
EU(15/06/2016)

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