

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2016

CORAM:

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

C.M.A.No.1032 of 2016

and

C.M.P. No.7962 of 2016

Tamil Nadu State Transport
Corporation Limited,
Railway Station Road
Kumbakonam Town and Taluk

.... Appellant/Respondent

Vs.

1. Chelladurai
2. Minor Kokila
3. Minor Madhavan
4. Minor Senthamil Selvi
5. Minor Arunadevi
(Minors rep. by their Father
and next friend Chelladurai)

.... Respondents/Petitioner

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 12.04.2013, made in M.C.O.P No.173 of 2012, on the file of the Motor Accident Claims Tribunal, Principal Sub Judge, Myladuthurai.

For Appellant :Mr. D.Venkatachalam

J U D G M E N T

The Transport Corporation has come up with this appeal challenging the negligence and quantum of compensation awarded by the Tribunal.

2. On 02.04.2012, when the deceased Shanthi was travelling as a passenger in the appellant Transport Corporation bus bearing Registration No.TN 49 N 1737, before she could get down from the bus, the driver moved the bus in a rash and negligent manner and so she fell down and sustained grievous fatal injuries and died on the way to the hospital. The Claim Petition has been filed by her husband and minor children, before the Tribunal, seeking a sum of Rs.15,00,000/- as compensation. After analyzing the available oral and documentary evidences, the Tribunal awarded a sum of Rs.6,67,000/- as compensation, under the following heads:

Sl. No	Heads	Amount
1	Loss of Income	Rs.6,12,000.00
2	Loss of consortium	Rs. 10,000.00
3	Loss of love and affection to the claimants 2 to 5	Rs. 10,000.00
4	Funeral & Other expenses	Rs. 5,000.00
	Total	Rs.6,67,000.00

3. Learned counsel appearing for the appellant/Transport Corporation, challenging negligence, mainly contended that the deceased got down from the running bus, due to which the deceased sustained fatal injuries and hence the contributory negligence should have been fixed on the deceased. He further contended that the Tribunal ought not to have considered the evidence of PW1, who is the husband of the deceased and not an eye witness to the accident. That apart, the age of the deceased has been wrongly fixed as 28, while the age of her eldest daughter is 14. Hence, the quantum of compensation awarded by the Tribunal is also on the higher side and challenging the same, this appeal has been filed.

4. As per the deposition of the witnesses, the evidences and documents produced before the Tribunal, it has been found that the driver of the bus, in a rash and negligent manner had moved the bus, without noticing the deceased getting down, due to which the deceased lost her balance and fell down from the bus. Due to the fatal accident, the deceased has left behind four minor dependents and her husband, at a very young age, but the Tribunal has awarded only a meagre amount towards love and affection. Although it is stated before the Tribunal that the deceased was a fish vendor, in the absence of any proof, her income has been fixed only at a minimum of Rs.4500/- per month and deducting 1/3rd towards personal expenses, the loss of income has been calculated at the rate of Rs.3000/- per month. The Tribunal, further considering the age of the deceased and that of the dependents, has granted a fair and reasonable compensation. On the above grounds, this Appeal is liable to be dismissed.

5. This Court considered the submissions made by the learned counsel for the appellant and perused the materials available on record. Since the respondents/ claimants are not going to be prejudiced with the result of this Appeal, the main case itself is disposed of at the stage of admission itself, without serving notice to them.

6. Perusal of the records clearly show that after investigation, the Tribunal has come to the conclusion that the negligence is only on the part of driver of the Transport Corporation bus and not on the deceased. In view of the settled law, we do not find any error on the part of the

Tribunal in the fixation of salary of the deceased and the compensation awarded towards "Loss of Consortium". Also, we find that the compensation of a sum of Rs.5,000/- awarded under the head 'Funeral and other expenses' and a sum of Rs.10,000/- under the head 'Loss of Love and Affection' to each children, are meagre and they do not require any interference.

7. In the above factual background, this Court is of the considered opinion that there is no necessity to interfere with the order passed by the Tribunal. Accordingly, the Civil Miscellaneous Appeal is dismissed confirming the quantum of compensation and the rate of interest at 7.5% per annum awarded by the Tribunal. The appellant/Transport Corporation is directed to deposit the entire award amount together with accrued interest, less the amount already deposited, to the credit of M.C.O.P.No.173 of 2012 on the file of the Motor Accidents Claims Tribunal, Principal Subordinate Judge, Myladuthurai, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the Tribunal shall pay compensation to the major claimants in the form of a crossed Account Payee Cheque, favouring only the claimant and it should not be issued in favour of any other person/Company. It is needless to mention that the proportionate share of the minor respondents/claimants shall be deposited in any one of the Nationalised Banks initially under reinvestment scheme for a period of three years, renewable thereafter periodically and the interest accrued thereon shall be withdrawn by their natural guardian, once in three months, till the minors attain majority. In the case of minor claimants, the proportionate share of the award amount shall be paid to them in the form of a crossed Account Payee Cheque, once they attain majority. No costs. Consequently, the connected C.M.P. is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

avr
To :
The Principal Subordinate Judge
Motor Accidents Claims Tribunal,
Myladuthurai.

GJII(CO)
EU 27.6.16

C.M.A.No.1032 of 2016
and
C.M.P. No.7962 of 2016