IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.01.2016

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THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.106 of 2016
and
CMP No.1034 of 2016

The Managing Director,
TNSTC Kumbakonam Ltd.,
Railway Station New Road,
Kumbakonam. ... Appellant / 2nd Respondent

vs.

1.C.Rupkumar Benny
2.Marthal Viji
3.Minor Edwin Preamkumar
(Minor rep by his next friend and mother
Marthal Viji) ...Respondents 1 to 3/ Claimants

4.Chandrasekaran ...4th Respondent/ 1st Respondent

Civil Miscellaneous Appeal filed under Section 173 Motor Vehicles Act, 1988 against the Judgment and decree dated 7.4.2015 passed in M.C.O.P.No.3446 of 2013, on the file of the Motor Accident Claims Tribunal/Principal District Court, Cuddalore.

For Appellant : Mr.D.Venkatachalam

JUDGMENT

This Appeal is directed against the Judgment and decree dated 7.4.2015 passed in M.C.O.P.No.3446 of 2013 on the file of the Motor Accident Claims Tribunal/Principal District Court, Cuddalore, in awarding a sum of Rs.9,04,000/- for the loss of life of one Christopher Suresh Kumar, aged about 22 years.

2. The learned counsel appearing for the appellant/Transport Corporation, assailing the impugned award, would submit that the Tribunal has wrongly proceeded on the basis of evidence of PW.1 who is father of the deceased and who was not even an eye-witness to the accident and hence, the finding given with regard to the manner of the accident that had taken place on 6.10.2013 and the death of the deceased cannot be taken into account so as to conclude that the driver of the bus was responsible for the

accident. Adding further, when the driver of the offending bus was examined as RW.1 who is a competent person to speak about the accident, he has categorically deposed before the Tribunal that the deceased was riding his Motor Cycle in a rash and negligent manner and dashed against the bus. However, the Tribunal has failed to take into account the contributory negligence against the deceased. Adding further, he would submit that even though there was no valid document to substantiate the income of the deceased, the Tribunal has wrongly fixed the notional monthly income of the deceased as Rs.6,000 per month, which is on the higher side. This apart, though the deceased was a bachelor at the time of the accident, the Tribunal has wrongly deducted $1/3^{rd}$ from the notional income of the deceased. Therefore, on these grounds, he would submit that the impugned award needs to be interfered with by this Court.

3. This Court hardly finds any merits in any of the above contentions. The reason is that on 6.10.2013 at about 4.15p.m., while the deceased Christopher Sureshkumar, aged about 22 years, was returning to Cuddalore after completing his work on Thvalakuppam in his motor cycle bearing Reg.No.TN 31 AD 2911 on Pondicherry to Cuddalore main road, the driver of the appellant's TNSTC Bus bearing Reg.No.TN 68 N 0078, driven the bus in a rash and negligent manner without making horn, dashed against the motor cycle of the deceased. Due to the accident, the deceased was thrown out of the motor cycle and sustained fatal injuries and succumbed to the injuries on the spot itself. The post mortem was done in the Government Hospital, Cuddalore. A criminal case came to be registered in Crime No.2002 of 2013 for the offence under sections 279 and 304 (A) of the IPC against the driver of the offending vehicle.

4. The Tribunal considering the oral and documentary evidence made available from both side came to the conclusion that the accident had happened only due to the rash and negligent driving of the driver of the bus belonging to the appellant Transport Corporation bearing Reg.No.TN 68 N 0078. Accordingly, the Tribunal has held that the appellant Transport Corporation and the driver of the bus/ fourth respondent herein were liable to pay the compensation to the claimants.

5. According to the claimants, the deceased was aged about 22 years, at the time of the accident. The post-mortem certificate Ex.P.3 would reveal that the deceased was 22 years at the time of the accident Ex.P.4 driving licence of the deceased would reveal that his date of birth is 11.4.1991. The Tribunal, by taking note of such facts, fixed the age of the deceased as 23 years. On going through the records, the Tribunal found that the deceased was alleged to be the proprietor of RMS Digital Work and RMS Computer Sales and Service and was earning Rs.50,000/- per month. To prove this aspect, the claimants have produced various documents such as Exs.P.6 to P.17. However, all these documents

are the education status, birth certificate and Computer Course certificate of the deceased. Thus, no valid document was produced to prove the occupation and income of the deceased. Keeping in mind that even a lay man doing any work can earn a sum of Rs.6,000/- per month, the Tribunal fixed the notional monthly income of the deceased as Rs.6,000/-, which cannot be said to be excessive in view of the decision of the Apex Court Syed Sadiq etc., vs. Divisional Manager, United India Insurance Co.Ltd., reported in 2014 (1) TNMAC 459 (SC). The Tribunal has also rightly applied the multiplier 18 since the deceased was aged 23 years, which falls in the age of 21 to 25 years.

6. It is the contention of the learned counsel for the appellant that the Tribunal ought not to have deducted 1/3rd from the notional income of the deceased towards personal expenses of the deceased but instead it ought to have deducted 50% of the income towards personal expenses of the deceased. It is to be noted that the Tribunal has not added 30% of the income towards future prospects of the deceased. If 30% of the income is added to the income of the deceased towards future prospects, it will fetch more compensation. When such point was pointed out, the learned counsel for the appellant does not press on this point. Therefore, it is unnecessary for this Court to go into that issue now.

7. Ultimately, the Tribunal has awarded a total compensation of Rs.9,04,000/- to the claimants/respondents 1 and 2 herein alone and the claim of the third claimant/respondent was rejected since the third respondent was a minor and his father, the first respondent has to maintain the minor and hence, he was not treated as the dependent of the income of the deceased.

8. For the reasons stated above, this Court is unable to find any infirmity in the impugned award. The impugned award is sustained. Hence, the Appeal fails and the same is dismissed. No costs. Connected CMP No.1034 of 2016 is closed.

9. The appellant/Transport Corporation is directed to deposit the entire award amount, less if any amount already deposited, within a period of four weeks from the date of receipt of a copy of this order. On such deposit, it is for the claimants to move appropriate application before the Tribunal for withdrawal of the award amount.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

asvm

To

The Motor Accident Claims Tribunal,
Principal District Court, Cuddalore.

1 cc to Mr.D. Venkatachalam, Advocate, Sr. 4016

C.M.A.No.106 of 2016
and
CMP No.1034 of 2016

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