IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.03.2016

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THE HONOURABLE MR.JUSTICE R.SUDHAKAR
and
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

C.M.A.No.1221 of 2015
and
M.P.No.1 of 2015

Metropolitan Transport Corporation Ltd
represented by its Managing Director
No.2, Pallavan Salai,
Chennai 600 002. ... Appellant/Respondent

Vs.

1. K.Indira
2. K.Janani
3. K.Aswini
4. K.Priyadarshini ... Respondents/Petitioners

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the fair and decreetal order dated 21.04.2014 passed in M.C.O.P.No.242 of 2013 on the file of the Motor Accidents Claims Tribunal (II Additional District Judge), Thiruvallur at Poonamallee.

For Appellant : Mr.S.S.Swaminathan

For Respondents : Mr.K.Varadhakamaraj

JUDGMENT

(Judgment of the Court was delivered by R.SUDHAKAR,J.)

The Transport Corporation is on appeal challenging the award dated 21.04.2014 passed in M.C.O.P.No.242 of 2013 on the file of the Motor Accidents Claims Tribunal (II Additional District Judge), Thiruvallur at Poonamallee, on the plea of negligence as well as quantum of compensation.

2. It is a case of fatal. On 14.03.2013 at about 09.30 a.m. when the deceased was got into the MTC Bus bearing

Registration No.TN 01 N 8365 at EB office bus stop at Kundrathur-Pallavaram main road, the driver of the bus suddenly moved the bus in a rash and negligent manner and hit on the right side of the another MTC bus with the deceased. Due to the accident, the deceased fell down on the road and sustained grievous injuries and he died in the hospital. The accident had occurred only due to the rash and negligent driving of the respondent's bus. The wife and the daughters of the deceased filed a claim for compensation for a sum of Rs.66,20,000/-, however, restricted their claim to Rs.50,00,000/-.

3. In support of the claim, the 1st claimant Indira, wife of the deceased examined herself as P.W.1; One Niyamadullah was examined as P.W.2 and Sugumar was examined as P.W.3 and Exs.P-1 to Ex.4 were marked, the details of which are as follows:-

Ex.No.	Details
P1	FIR
P2	Postmortem certificate
P3	Legal heir certificate
P4	Salary particulars

On behalf of the Transport Corporation, one Vijayan was examined as R.W.1, however no document was marked before the Tribunal.

4. The Tribunal based on the oral evidence of the witnesses, the F.I.R. and also taking note of the fact that the Corporation has not proved that the deceased was a foot board passenger, came to conclusion that the driver of the bus was responsible for the accident and consequently liability was fixed on the Transport Corporation to compensate the claimants.

5. Based on the oral and documentary evidence, the Tribunal granted the following amounts as compensation with interest at 7.5% per annum:-

Sl. No.	Head	Amount granted by the Tribunal
1	Compensation for loss of revenue	Rs. 36,28,509/-
2	Loss of consortium to the 1st petitioner	Rs. 25,000/-
3	Loss of love & affection to 2nd to 4th petitioners	Rs. 30,000/-
4	Transport expenses	Rs. 5,000/-
5	Funeral expenses	Rs. 5,000/-
	Total compensation	Rs. 36,93,509/-

Aggrieved over the same, the Transport Corporation has come before this Court.

6. This Court considered the submissions made on the learned counsel on either side and perused the materials available on record.

7. On the plea of negligence and questioning the compensation, the Transport Corporation is before this Court. The accident in this case was happened on 14.03.2013. Stating that the deceased was travelling in the foot board and therefore, the negligent act of the deceased resulted in the accident and hence there is no liability is the plea of the appellant Corporation. That has been negatived by the Tribunal in paragraph No.8 of the Judgment, holding that the appellant/respondent before the Tribunal did not prove that the deceased was a foot board passenger and that the deceased tried to got into the moving bus. Therefore, the first plea of negligence stands rejected.

8. The second plea is with respect to quantum of compensation. The Tribunal, while granting compensation, taking note of the fact that the deceased was working in the Southern Railway, based on Ex.P.4, salary particulars, fixed the income of the deceased at Rs.45,814/-. In such view of the matter, the income tax deduction should be at 20%, whereas the Tribunal has deducted only 10% towards income tax. There is no serious dispute by the respondent on this score.

9. So far as the amount of compensation awarded under the other heads are concerned, though a plea was taken that they are on the higher side, taking note of the fact that the wife and the three daughters are the claimants, we are of the view that the compensation for the loss of consortium to the wife at Rs.25,000/- and loss for love and affection to the three daughters at Rs.30,000/- would not be on the higher side. We are also of the view that the amount awarded under the heading transport expenses and for funeral expenses need not be reduced.

10. Accordingly, except under the heading loss of revenue, that too deducting 20% (Rs.8,06,234/-) towards income tax instead of 10% (Rs.4,03,167/-), all other heads are confirmed.

11. Accordingly, the compensation awarded by the Tribunal under different heads is modified as follows:

Sl. No.	Head	Amount granted by the Tribunal	Amount now modified
1	Compensation for loss of revenue	Rs.36,28,509/-	Rs.32,25,342/-
2	Loss of consortium to the 1st petitioner	Rs. 25,000/-	Rs. 25,000/-
3	Loss of love and affection to 2nd to 4th petitioners	Rs. 30,000/-	Rs. 30,000/-
4	Transport expenses	Rs. 5,000/-	Rs. 5,000/-
5	Funeral expenses	Rs. 5,000/-	Rs. 5,000/-
	Total compensation	Rs.36,93,509/-	Rs.32,90,342/-

12. There is no serious objection with respect the interest granted at 7.5% per annum.

13. In the result, the civil miscellaneous appeal is partly allowed in the following terms:-

(i) The award of the Tribunal is reduced to Rs.32,90,342/- from Rs.36,93,509/-

(ii) The interest granted at 7.5% p.a. is confirmed.

(iii) Pursuant to the interim order granted by this Court, the appellant/Transport Corporation has deposited 50% of the award amount to the credit of M.C.O.P.No.242 of 2013 on the file of the Motor Accidents Claims Tribunal (II Additional District Judge), Tiruvallur and the claimants were permitted to withdraw 50% of the deposited amount. In view of the same, the appellant/Transport Corporation is directed to deposit the balance award amount if any, as per the modified award to the credit of M.C.O.P.No.242 of 2013 on the file of the Motor Accidents Claims Tribunal (II Additional District Judge), Tiruvallur, within a period of eight weeks from the date of receipt of a copy of the order and on such deposit being made, the claimants are permitted to withdraw the entire award amount now modified by this Court along with proportionate interest as apportioned by the Tribunal by filing necessary applications before the Tribunal. It is also made clear that if any excess amount is deposited, the appellant/Transport Corporation is entitled to withdraw the same.

There will be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

The II Additional District Judge
Motor Accidents Claims Tribunal
Thiruvallur at Poonamallee.

+1cc to Mr.K.Varadhakamaraj, Advocate, S.R.No.17569
+1cc to Mr.S.S.Swaminathan, Advocate, S.R.No.17604

C.M.A.No.1221 of 2015

KK(CO)
CA(13/04/2016)