

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.11.2016

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THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A. No.2643 of 2016

and

C.M.P. No.18906 of 2016

The Managing Director,
Tamil Nadu State Transport
Corporation Limited,
Kumbakonam Town and Division. Appellant/Respondent

Versus

1.Selvi
2.Kanitha
3.Kabilan
4.Kavitha
5.Ramaiyan
6.Vasantha Kokilam Respondents/Petitioners

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 04.03.2016 made in M.C.O.P.No.163/2014 on the file of the Motor Accidents Claims Tribunal, Mannarkudi.

For Appellant : Mr.D.Venkatachalam

J U D G M E N T

Aggrieved over the impugned award dated 04.03.2016 made in M.C.O.P.No.163/2014 on the file of the Motor Accidents Claims Tribunal, Mannarkudi, the Transportation Corporation has brought this appeal, questioning the negligence as well as quantum of compensation fixed by the learned Tribunal.

2.According to the claimants, on 09.04.2010 at about 4.00 p.m., when the first respondent's husband was riding the motor cycle bearing Registration No.TN-50-A-5725 along with his second wife and his minor child as pillion riders, near Alankadu, a bus bearing Registration No.TN-49-N-1224 belonging to the appellant's Transport Corporation, which was driven by its driver in a rash and negligent manner, dashed the motor cycle. Due to the accident, the rider of the motor cycle and the pillion riders were died on the spot itself. According to the claimants, the accident had happened due to the rash and negligent driving of the driver of the bus.

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3.Assailing the negligent aspect, learned counsel appearing for the appellant would submit that when the

husband/rider, wife and their child/ pillion riders were travelling on a two wheeler on a congested road, the rider, who was unable to navigate the two wheeler, hit the bus, coming from the opposite direction. Only due to the negligence on the part of the rider, the accident had happened and in which the rider and the pillion riders died on the spot itself. Subsequently, the brother of the deceased/rider had given a complaint at Muthupettai Police Station against the driver of the bus belonging to the Transport Corporation and the police has registered a case in Crime No.200 of 2010 under Section 304(A) of I.P.C. He would further submit that the rider of the two wheeler, who had lost his control, only caused the accident. Therefore, this aspect needs examination.

3.1.Challenging the quantum of compensation fixed by the learned Tribunal, learned counsel for the appellant would submit that the learned Tribunal without even any supporting document to accept the claim that the deceased was earning a sum of Rs.4,500/- per month, has fixed a sum of Rs.6,000/- as notional monthly income. He would further submit that when the ratio laid down by the Hon'ble Apex Court in the case of Sarla Verma (Smt.) and others vs. Delhi Transport Corporation and another reported in 2009 (6) SCC 121 clearly and categorically held that if the deceased is aged between 40 to 50 years, only 30% actual income has to be added towards future prospects, in the present case, as the deceased was aged about 45 years at the time of accident, instead of adding 30% of the actual salary towards future prospects, it has wrongly added 50% of the income towards future prospects. Therefore, on this score, the quantum of compensation has unreasonably increased.

4.But no evidence whatsoever has been produced in support of his argument before the learned Tribunal. When the learned Tribunal after placing a reliance on the F.I.R., which has been marked as Ex.P1, implicating the driver of the bus belonging to the Transport Corporation as the accused before the Criminal Court for having rashly and negligently driven the bus and leading to the accident, which has been subsequently corroborated by P.W.2/ an eye witness to the accident, has given a reasonable finding, which does not call for any interference. Therefore, the same is hereby affirmed.

4.1.While coming to the quantum fixed by the learned Tribunal, when the claimant made a claim that the the deceased was an Agriculture Labour at the time of accident, which took place on 09.04.2010, fixing Rs.6,000/- as notional monthly income cannot be considered as un-reasonable, as per the ratio laid down by the Hon'ble Apex Court in the case of Syed Sadiq and others vs. Divisional Manager United India Insurance Co. Ltd. reported in 2014 ACJ 627 wherein it has held that the claimant was a vegetable vendor, who met with an accident in the year 2008 and has fixed the monthly income of the claimant at Rs.6,500/- in the absence of any evidence to prove the monthly income. Therefore, when the legal position is very clear as to the minimum notional monthly income at Rs.6,500/-

per month, in my considered opinion, the learned Tribunal has fixed a meagre amount of notional monthly income at Rs.6,000/-. It has added 50% of the actual salary towards future prospects. While coming to the other heads namely 'loss of consortium' and 'loss of love and affection', a sum of Rs.50,000/- and Rs.1,00,000/- have been awarded. When there are six claimants namely wife, mother, father and three children, awarding a sum of Rs.1,00,000/- totally to all the five claimants under the head 'loss of love and affection' and a sum of Rs.50,000/- to the wife under the head 'loss of consortium', required to be compensated. Therefore, the challenge made to the quantum is wholly un-warranted and this Court is not inclined to interfere with the same. Accordingly, the appeal fails and the same is dismissed. No costs. Consequently, connected C.M.P. is also dismissed.

5. Since the learned counsel for the appellant submitted that the appellant has deposited Rs.25,000/- towards statutory deposit, the balance amount is directed to be 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 a petition before the learned Tribunal for withdrawing of the said amount.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

vga

To

The Motor Accidents Claims Tribunal,
Mannarkudi.

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+1cc to Mr.D.Venkatachalam, Advocate, S.R.No.68835

C.M.A. No.2643 of 2016

GJII(CO)
CA(27/12/2016)

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