

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2016

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THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.74 of 2016

and

C.M.P.No.696 of 2016

The Managing Director,
Tamil Nadu State Transport
Corporation Limited,
Villupuram.

... Appellant

Vs.

1.Reetha
2.Arokiya Amalraj
3.Abiraham
4.Elisebath Rani

... Respondents

Civil Miscellaneous Appeal filed under Section 173 Motor Vehicles Act, 1988 against the Judgment and decree dated 31.7.2015 in MCOP No.217 of 2013 passed by the Motor Accident Claims Tribunal (Special District Court to deal with MCOP Cases), Villupuram.

For Appellant : Mr.K.J.Sivakumar

JUDGMENT

The Managing Director of the Tamil Nadu State Transport Corporation, Villupuram, has brought this Civil Miscellaneous Appeal questioning the correctness of the impugned award dated 31.07.2015 in MCOP No.217 of 2013 passed by the Motor Accident Claims Tribunal (Special District Court to deal with MCOP Cases), Villupuram, awarding a sum of Rs.4,90,500/-, for the loss of life of the bread winner of the claimants, namely, Mariyadoss, aged about 55 years, in the accident that had taken place on 1.1.2012 at 8.00 p.m., at Elavanasur Kottai, near Kunjaram Cross Road, where the deceased, while walking on the extreme left side of the road with his Cycle, was hit by the offending vehicle/TNSTC Bus bearing Reg.No.TN 32 N 2558, belonging to the appellant Transport Corporation, which was driven by its driver in a rash and negligent manner. His cycle was completely damaged. The deceased was taken to the

Government Hospital, Ulundurpet, immediately, and on examining the body, the duty Doctor declared him as dead.

2. The learned counsel appearing for the appellant would submit that the Tribunal ought not to have taken into account the evidence of PW.1, who is the wife of the deceased and held that the driver of the appellant Transport Corporation Bus was negligent in driving the vehicle. Adding further the learned counsel would submit that mere registration of FIR registered against the driver of the appellant Transport Corporation is not sufficient to hold negligence on the part of the driver of the offending vehicle. No documentary evidence has been filed to prove the age of the deceased and income of the deceased. The Tribunal has erroneously fixed the higher notional income of the deceased in the absence of any documentary proof. Eventually, he would pray that the impugned award needs to be modified by this Court taking into account of the above aspects.

3. On consideration of oral and documentary evidence made available before the Tribunal, the Tribunal came to the conclusion that the driver of the Bus belonging to the appellant Transport Corporation was responsible for the cause of accident and death of the deceased and accordingly attributed negligence on the part of the driver of the offending Bus. The age of the deceased was claimed as 55 years and in Ex.P4 Post mortem report also, the age of the deceased was stated as 55 years. There was no rebuttable evidence to disprove the said fact. Hence, the tribunal proceeded on the basis that the age of the deceased was 55 years at the time of the accident. In the claim petition, the claimants claimed a sum of Rs.10,00,000/- on the ground that the deceased was self-employed and was earning a sum of Rs.30,000/- per month. The Tribunal, finding that there was no acceptable documentary evidence filed to prove his average income, has fixed the notional monthly income of the deceased as Rs.4,500/-. Since there were 4 dependants, $1/4^{\text{th}}$ of the notional annual income was deducted towards personal expenses of the deceased and as such, the total dependency has been calculated at Rs.40,500/- (Rs.3,375 x 12) per annum. Following the principles laid down in Sarla Verma and others Vs. Delhi Transport Corporation Ltd., and another [(2009) 6 SCC 121] the Tribunal applied multiplier 11. As such, the total dependency is calculated at Rs.4,45,500/- (40,500 X 11). Then, the Tribunal awarded a sum of Rs.10,000/- towards loss of consortium, which is a very meagre one. A sum of Rs.5,000/- has been fixed towards funeral expenses. Similarly, the Tribunal has awarded a sum of Rs.10,000/- each towards loss of love and affection to the claimants 2 to 4 (totalling to the tune of Rs.30,000). Thus, in toto, the Tribunal has awarded a total compensation of Rs.4,90,500/- to the claimants as against the claim of Rs.10,00,000/- for the

loss of life of the sole bread winner of the claimants. In my considered view, the award cannot be said to be excessive and arbitrary.

4. For the reasons stated above, this Court is unable to find any valid reason to interfere with the impugned Judgment and Decree. The impugned Judgment and Decree of the Tribunal is sustained and the Appeal is dismissed. No costs. Connected Miscellaneous Petition is closed.

5. 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. The claimants/respondents are permitted to approach the Tribunal by filing proper application for withdrawal of the award amount.

asvm

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

The Motor Accident Claims Tribunal/
(Special District Court to deal with MCOP Cases),
Villupuram.

+ 1 cc to Mr.K.J.Sivakumar, Advocate Sr 5768

KR/29/3/16

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