

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.04.2016

CORAM

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

C.M.A. No.865 of 2016

&

C.M.P. No. 7019 of 2016

The Managing Director
Tamil Nadu State Transport Corporation
(Villupuram) Limited
No.3/137, Salamedu,
Vazhuthareddy
Villupuram 605 602.

...Appellant/3rd Respondent

Vs.

Padmavathi (died) memo recorded

1. K.Venkatesan
2. K.Valarmathi
3. K.Indira
4. Ponnambalam
5. M/s TATA AIG

General Insurance Co. Ltd.,
Egmore, Chennai 8

..Respondents 4 and 5/
Respondents 1 and 2

Prayer: Civil Miscellaneous Appeal filed under Sec.173 of Motor Vehicles Act, 1988 as against the award and decree dated 05.07.2014 made in M.C.O.P. No.2049 of 2010 on the file of Motor Accidents Claims Tribunal, (Principal District Judge), Cuddalore.

For Appellant :: Mr.D.Venkatachalam
for
Mr.J.Sivakumar

J U D G M E N T

This Civil Miscellaneous Appeal is preferred by the Transport Corporation as against the judgment and decree 05.07.2014 made in M.C.O.P. No.2049 of 2010 on the file of Motor Accidents Claims Tribunal, The Principal District Judge, Cuddalore.

2. On 06.09.2009 at about 7.30 a.m., when the deceased Kuppusamy was travelling in the appellant Corporation bus bearing registration No.TN-32-N-2688, from Cuddalore to Villupuram opposite to Thirukumaran Rice Mill, Rasapalayam cross road, the 4th respondent's mini lorry bearing Registration No.TN 21 M 7080 which came from the opposite direction in a great speed in a rash and negligent manner, dashed against the appellant bus and caused the accident, resulting in the death of the deceased Kuppusamy.

3. Originally the wife and 3 children filed claim petition before the Tribunal, claiming compensation to the tune of Rs.7,00,000/- and since the wife died, the petition was abated as against her and the Tribunal, based on the oral and documentary evidence, granted compensation to the tune of Rs.2,84,100/- to the children. Aggrieved over the same, the present appeal is filed by the Transport Corporation.

4. The twin contentions raised by the Appellant Corporation is that one on the quantum of compensation awarded and also as regards the finding with regard to the negligence. According to the appellant, the Tribunal ought not to have fixed 20% negligence on the driver of the Transport Corporation Bus. As far as quantum of compensation, according to the appellant, the same is on the higher side.

5. This Court heard the submissions made by the learned counsel for the appellant and perused the materials available on record.

6. A Mason aged 81 years, claiming to be a Civil Supervisor, met with an accident on 6.9.2009 and his wife is now deceased. Children of the deceased are the claimants. They have claimed compensation of a sum of Rs.7 lakhs. The Tribunal, taking note of Ex.P.19-Construction Employee Membership Card, came to the conclusion that during the relevant point of time, even if the deceased Kuppusamy was not doing any work, definitely, he can earn at least Rs.3,500/-per month, has correctly fixed the monthly income at Rs.3,500 /-and did not accept the plea that the monthly income of the deceased as Rs.20,000/-. Further, the Tribunal, after holding that the deceased wife died during the pendency of the claim petition before the Tribunal and that more than 3 were surviving at the time of the death of 81 year old person, by adopting multiplier 5, and deducting 1/3rd towards personal expenses, granted a sum of Rs.1,40,000/- towards loss of income; a sum of Rs.30,000/- towards loss of love and affection; a sum of Rs.10,000/- for funeral expenses; a sum of Rs.10,000/- towards transportation

charges and a sum of Rs.94,100/- towards medical expenses. Hence, I am of the view that the compensation awarded under the various heads appears to be reasonable.

7. As far as the contention with regard to fixation of percentage of negligence, the Tribunal came to the conclusion that the accident occurred due to the rash and negligent driving of the drivers of the vehicles and the Tribunal has rightly fixed the negligence on the driver of the appellant bus at 20% and that the driver of the bus could no way be exempted for the accident which resulted in the death. Hence, this Court is of the view that the same cannot be said to be excessive as the driver of the Bus as well as the driver of the mini lorry are responsible for the accident.

8. In view of the above, this Court finds no reason to interfere with the award of the Tribunal and hence the appeal is dismissed. No costs. Connected miscellaneous petition is closed.

9. The Appellant Transport Corporation is directed to deposit the entire award amount together with proportionate costs and interest @ 7.5% per annum from the date of claim petition, before the Tribunal, to the credit of M.C.O.P.No.2049 of 2010 on the file of the Motor Accidents Claims Tribunal, Principal District Judge, Cuddalore, within a period of four weeks from the date of receipt of a copy of this order and on such deposit being made, the respondents herein/claimants are entitled to make necessary applications to withdraw the the same, as apportioned by the Tribunal.

Sd/-

Assistant Registrar(CS V)

//True Copy//

सत्यमेव जयते

Sub Assistant Registrar

To

The Principal District Judge,
(The Motor Accidents Claims Tribunal),
Cuddalore.

C.M.A. No.865 of 2016

gr[co]
srg 06/07/2016