

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.04.2016

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

C.M.A.No.887 of 2016
and C.M.P.No.7117 of 2016

The Managing Director,
Metropolitan Transport Corporation Limited
Chennai 2. Appellant/Respondent

vs.

1. P.Rugmini
2. K.Gopi Respondents/respondents

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 24.09.2014 passed in M.C.O.P.No.2862 of 2012 on the file of the Motor Accidents Claims Tribunal, II Court of Small Causes, Chennai.

For Appellant : Mr.S.Sivakumar
For Respondents: Mr.T.G.Balachandran

JUDGMENT

The Transport Corporation has preferred this Civil Miscellaneous Appeal challenging the Judgment and decree dated 24.09.2014 passed in M.C.O.P.No.2862 of 2012 on the file of the Motor Accidents Claims Tribunal, II Court of Small Causes, Chennai.

2. Heard the learned counsel for the appellant and the learned counsel who took notice for the respondents and perused the materials available on record.

3. A 22 year old Beautician died in a fatal accident which took place on 22.05.2012, when the appellant Corporation Bus hit the share auto, in which the deceased was travelling on Kannaki Nagar Main Road, Chennai. The claimants, who are the parents of the deceased approached the Tribunal claiming compensation to the tune of Rs.20,00,000/- on the basis of the monthly income of the deceased at Rs.7,500/- per month. The Tribunal, taking note of the factual aspect, fixed the monthly income at Rs.6,000/- per month and not as pleaded by the claimants at Rs.7,500/- per

month and by adopting multiplier method and after deducting 50% towards personal expenses and adding 50% for future prospects, awarded compensation to the tune of Rs.9,72,000/- towards loss of income, besides awarding a sum of Rs.1,00,000/- towards loss of love and affection and a sum of Rs.25,000/- towards funeral expenses totalling a sum of Rs.10,97,000/- together with interest at 7.5% p.a. Aggrieved over the same, the present Civil Miscellaneous Appeal is filed by the Transport Corporation.

4. According to the learned counsel for the appellant/Transport Corporation, the Tribunal has not considered the fact that the deceased travelled in a share auto and due to the rash and negligent driving of the auto driver, the accident took place and that apart without impleading the necessary parties to the proceedings, the claim petition was ordered by the Tribunal and hence, it has got to be interfered with. It is also contended that the deceased was self-employed and hence no future prospects can be granted and thus, the Tribunal has erred in awarding 50% towards future prospects. In any event, the Tribunal ought to have fixed at least 50% negligence on the part of the deceased, since the accident took place due to the negligent driving of the driver of the share auto, in which the deceased was travelling.

5. However, a cursory glance of the award of the Tribunal would make it clear that due to the accident caused by the appellant/Transport Corporation bus, the deceased sustained injuries and died on 22.05.2012. That apart, in the absence of proof of income, the Tribunal has taken the monthly income at Rs.6,000/- based on the Hon'ble Apex Court judgment in the case of "Syed Sadiq and others versus Divisional Manager, United India Insurance Co. Ltd." reported in 2014 ACJ 627, wherein, in respect of a vegetable vendor, who sustained injuries in an accident which occurred in 2008, the monthly income was determined at Rs.6500/-. As far as this case is concerned, the accident had occurred on 22.05.2012. Hence, fixation of a sum of Rs.6,000/- as the monthly income of the deceased is not excessive. That apart, the appellant has not proved that the accident had taken place due to the rash and negligent driving of the share auto driver and hence foisting 50% negligence on the part of the deceased cannot be accepted, as the deceased was not an auto driver and she has only been travelling in a share auto. That apart, the Tribunal has ignored the evidence of P.Ws.1 to 3 and awarded a meager compensation under the head 'loss of love and affection'. Hence, taking note of the totality of the circumstances, I find no reason to interfere with the award of the Tribunal.

5. In the above circumstances, finding no merit, by confirming the award of the Tribunal, the Civil Miscellaneous Appeal is dismissed. The rate of interest granted by the Tribunal is also confirmed. The appellant Transport Corporation Company is directed to deposit the entire award amount together with interest to the credit of MCOP No.2862 of 2012 on the file of the Motor Accident Claims Tribunal (II Court of Small Causes), Chennai, if not already deposited, within a period of six weeks from the date of receipt of a copy of this order and on such deposit being made, the claimants are entitled to withdraw their respective shares as apportioned by the Tribunal on filing necessary applications before the Tribunal. There will be no order as to costs in this appeal. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

The Motor Accidents Claims Tribunal
II Court of Small Causes, Chennai.

+1cc to Mr.S.Sivakumar, Advocate Sr.25359

+1cc to Mr.T.G.Balachandran, Advocate Sr.25013

C.M.A.No.887 of 2016

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srg 23/06/2016

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