IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.01.2017

CORAM:

THE HON'BLE DR. JUSTICE S.VIMALA

Civil Miscellaneous Appeal No.104 of 2017
& C.M.P.No.774 of 2017

The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
37 Mettupalayam Road,
Coimbatore ... Appellant / R-2 before the Tribunal

..Vs..

1. M.Thandapani
2. Savithiri
3. T.Arun ... Respondents 1 to 3 / claimants / Petitioners 1 to 3 before the Tribunal
4. Karuppusamy ... R-4
(R-4 is not necessary party, hence given up)

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree, dated 13.03.2013, made in MCOP No.798 of 2007 on the file of the Motor Accident Claims Tribunal, Additional District Court III, Dharapuram.

For Appellant : No Appearance

For Respondents : No Appearance

J U D G M E N T

In respect of death of one Ashok @ Ashok Kumar, aged 22 years, employed as an Assistant, in an Insurance Company at Coimbatore, earning a sum of Rs.5,000/- per month, met with an accident, while riding his motor cycle (Regn. No.TN37-AT-3228) and after fighting for life for one day, he died.

2. The claimant's father, mother and brother, filed a claim petition, claiming a sum of Rs.10 lakhs, before the Claims Tribunal at Erode. The Tribunal, after consideration of the materials placed before it, has chosen to award a sum of Rs.4,45,000/-. Challenging the award as excessive and

disproportionate, the Transport Corporation has filed this Appeal.

3. The main ground of appeal as taken in this Appeal is that the monthly income of the deceased had not been proved through relevant documentary evidence and therefore, the award passed is excessive.

4. In order to test the merits of the grounds taken, it is necessary to consider the parameters based on which the Tribunal has quantified the compensation. Based upon the death certificate and postmortem certificate, the age of the deceased had been fixed as '22' and correspondingly, the multiplier has been chosen as '16'. The monthly income has been fixed at Rs.3,500/-. Deducting 50% towards the personal expenses and applying multiplier of '16', loss of dependency has been quantified at Rs.3,36,000/-. Awarding a sum of Rs.2,500/- (wrongly typed as Rs.4,45,000/-) towards the medical expenses, Rs.4,000/- towards loss to estate, Rs.2,500/- towards cremation expenses and Rs.1,00,000/- towards loss of love and affection, the total has been quantified as Rs.4,45,000/-.

5. The justifiability of the award is under challenge in this Appeal.

6. The appellant / Transport Corporation has challenged the finding on negligence in the grounds of appeal. It is suffice to point out that the appellant has not chosen to adduce any evidence with regard to the mode of accident. When a particular fact is within the special knowledge of the persons concerned, it is his duty to produce the best evidence, but that evidence has not been produced by the appellant herein. Therefore, the finding on negligence has to be confirmed and it is confirmed accordingly.

7. A mere perusal of the award passed by the Claims Tribunal would go to show that the monthly dependency has been taken at normal level and in the absence of considering the future prospective increase in income, while fixing the monthly income and monthly dependency, the award cannot be said to be excessive. Hence, the grounds of appeal are not acceptable and the Appeal is dismissed. No costs. No costs. Consequently, the CMP is also dismissed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

srk

To

1. Motor Accident Claims Tribunal,
   Additional District Court III, Dharapuram.

2. The Managing Director,
   Tamil Nadu State Transort Corporation Ltd,
   37, Mettupalaym Road, Coimbatore.

C.M.A.No.104 of 2017
& C.M.P.No.774 of 2017

SKS(CO)
VR(21/06/2017)