IN THE HIGH COURT OF JUDICATUE AT MADRAS

DATED : 21.02.2017

CORAM

THE HONOURABLE DR. JUSTICE S.VIMALA

C.M.A. No.306 of 2017

The Managing Director
Tamil Nadu State Transport Corporation
Erode. .. Appellant/3rd Respondent

versus

1. Kundhiyammal
2. Chinnasamy
3. Madhammal
4. Murugammal
5. Minor Rani
6. Minor Krishnakumar
minors R5,6 rep by
natural guradian and mother
R1 kunthiyammal ..Respondents 1 to6/Petitioners
7. N.Nagaraj
(R7-given up) ..7th Respondent/1st Respondent
8. The Divisional Manager,
National Insurance Co., Ltd.,
No.110, G First Floor,
Rose Building, Main Road,
Kovilpatty ..8th Respondent/2nd Respondent

Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the order and Decree dated 10.08.2002 and made in M.C.O.P.No.121/2000 on the file of Motor Accidents Claims Tribunal (3rd Additional District Judge), Krishnagiri.

For appellant : Mr.G.Muniratnam

J U D G M E N T

Challenging the finding of negligence as well as quantum of compensation awarded by the Claims Tribunal, the Transport Corporation has come forward with this Civil Miscellaneous Appeal.

2. The deceased, Muniappan, aged 40 years, earning a sum of Rs.3,500/- per month died in an accident that occurred on

24.04.1996. Hence, his Legal Representatives filed a claim petition in M.C.O.P.No.121 of 2000, seeking compensation for a sum of Rs. 5,00,000/-.

3. The Claims Tribunal, on consideration of oral and documentary evidence, has awarded a sum of Rs.2,50,000/- , with the following break-up details:

Loss of Earnings (1000x12x16)	-	Rs.1,92,000/-
Loss of expectation of life	-	Rs. 20,000/-
Love and affection	-	Rs. 15,000/-
Loss of consortium	-	Rs. 15,000/-
Funeral Expenses	-	Rs. 8,000/-
		Rs.2,50,000/-

4. The learned counsel for the appellant submits that the quantum of compensation awarded by the Claims Tribunal is very high and the same needs to be reduced. It is his further contention that multiplier fixed by the Tribunal is wrong.

5. The first Claimant is the wife, the claimants 2 to 6 are the children of the deceased. Based on the post-mortem certificate, Ex.-2, the Tribunal fixed the age of the deceased at 40 years and in the absence of any documentary proof to substantiate the monthly income, the Tribunal notionally fixed the monthly income at Rs.1,500/- and after deducting 1/3rd towards the personal expenses of the deceased and adopting multiplier of 16, the Tribunal quantified the loss of dependency at Rs.1,92,000/-.

6. Though it is the contention of the learned counsel for the appellant that the compensation awarded is excessive under the head loss of dependency, however, it is to be pointed out that when the Dependants are larger in number, as in the present case, the deceased would not be spending much towards his personal expenses, rather he would be allocating more amount towards maintaining his family. In the present case, the dependents being more than 5 in number, the Tribunal ought to have deducted 1/6th towards the personal expenses of the deceased, but has erroneously deducted 1/3rd towards the personal expenses. Had the deduction been 1/6th, the compensation under loss of dependency would have been much more. Further, the Tribunal has also not taken into consideration the future prospective increase in income of the deceased. In such circumstances, the compensation cannot be said to be excessive and, accordingly, the same is confirmed.

7. Insofar as the compensation awarded under the other heads are concerned, the Tribunal has considered the evidence in right perspective and has awarded compensation in a very conservative manner and, therefore, the same cannot be said to be excessive. Rather, the compensation is on the lower side only. Therefore, the compensation awarded on the other heads is also confirmed.

8. As far as negligence is concerned, the learned counsel for the appellant submit that the major responsibility has been fixed on the part of the Transport corporation, but the Tribunal ought to have fixed equal responsibility on the drivers of both the vehicles and, therefore, the said part of the finding deserves to be considered by this Court.

9. All the facts would go to show that Muniappan himself has travelled in the Tempo bearing TN69 Z 0636 and when the Tempo was proceeding to Erode, it is alleged that the bus belonging to the third respondent bearing Regn. No.TN 33 N 0468 came in a rash and negligent manner and hit against the Tempo resulting in the death of the deceased. The Tribunal has relied upon the evidence of eye witness to the accident i.e., P.W.2- Selvaraj (who travelled with the deceased). Though the Driver of the Transport Corporation bus gave the FIR, however, the Tribunal, on the evidence available on record held that the said FIR was registered at the behest of the driver of the bus to squirm out of the fault committed by him. The Transport Corporation having not adduced any further evidence to show contributory negligence on the part of the Tempo Driver, the Tribunal has rightly held that the accident had occurred due to the rash and negligent driving by the driver of the Tempo and accordingly fixed the liability solely on the appellant/Transport Corporation. On a consideration of the finding rendered by the Tribunal on the basis of the evidence available on record, this Court is of the considered view that the said finding is based on cogent and well considered reasoning and is not liable to be interfered with. Accordingly, the said finding of the Tribunal is confirmed.

10. For the reasons aforesaid, this Civil Miscellaneous Appeal is dismissed confirming the Judgment and Decree dated 10.08.2001, made in M.C.O.P.No.121/2000 on the file of Motor Accidents Claims Tribunal (3rd Additional District Judge), Krishnagiri.

11. The appellant/Transport Corporation is directed to deposit the award amount along with interests and costs as awarded by the Tribunal, less the amount, if any, already deposited to the credit of the claim petition, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed

to transfer the amount directly to the bank account of the major claimants through RTGS within a period of two weeks thereafter as per the ratio of apportionment ordered by the Tribunal. Insofar as the share of the minor claimants are concerned, the same shall be kept in an interest bearing fixed deposit till the minor claimants attain majority and the mother of the minor claimant is permitted to withdraw the interest accruing on the said deposit once in three months directly from the bank and utilise the same for the welfare of the minors.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

arr/GLN

To

1. The Presiding Officer
   Motor Accident Claims Tribunal
   3rd Additional District Judge,
Dharmapuri at Krishnagiri

copy to

The Section Officer, VR Section,
High Court, Madras.

+1 cc to Mr.D.venkatachalam Advocate sr 10897

C.M.A. No.351 of 2017

rsy(co)
aa17/04/2018