IN THE HIGH COURT OF JUDICATUE AT MADRAS

DATED 22.02.2017

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THE HONOURABLE DR. JUSTICE S.VIMALA

C.M.A. No.342 of 2017

The Managing Director
Tamil Nadu State Transport Corporation
Kudanthai Division, Railway Station Road
Kumbakonam Munsifi, Town and Taluk. .. Appellant/Respondent

versus

1. P.Usha
2. P.Manikandam
3. Minor P.Kumaraguru
4. Minor P.Abiraman
Minors represented by their next friend and mother P.Usha
5.R.Muthukumarasamy
6.M.Vishalakshi ..Petitioners/Respondents

Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 09.08.2016 made in M.C.O.P.No.140 of 2014 on the file of the Motor Accident Claims Tribunal, Additional Subordinate Judge, Myladuthurai.

For appellant : D.Venkatachalam

J U D G M E N T

Challenging the finding of negligence as well as quantum of compensation, the Transport Corporation has filed this Civil Miscellaneous Appeal.

2. The deceased, Panneerselvam, aged 50 years, driver in Tamil Nadu State Transport Corporation, earning a sum of Rs.5,520/- per month died in an accident that occurred on 27.01.2013. Hence, the wife, children and the parents of the deceased, have filed a claim petition in M.C.O.P.No.140 of 2014, claiming compensation for a sum of Rs.30,40,000/-.

3. The Claims Tribunal, on consideration of the Oral and documentary evidence has awarded a sum of Rs.10,13,800/- with interest @ 7.5% per annum from the date of petition till the date of deposit. The break-up details of the same as under:

Loss of Earnings	-	Rs.7,48,800/-
Loss of consortium to first claimant	-	Rs. 50,000/-
Loss of love and affection to claimants 2 to 4	-	Rs.1,50,000/-
Funeral expenses	-	Rs. 10,000/-
Transport Expenses	-	Rs. 5,000/-
		Rs.10,13,800/-

4. The learned counsel for the appellant submits that though FIR has been registered against the deceased on the complaint given by the driver of the appellant, the Claims Tribunal has failed to consider the same and fixed the liability on the part of the appellant. It is his further submission that the tribunal has fixed a sum of Rs.6,000/- as monthly income of the deceased, which is on the higher side. It is further submitted that the Claims Tribunal, ought to have deducted 1/3rd of the income towards personal expenses of the deceased, while quantifying the compensation towards Loss of earnings. The learned counsel for the appellant also contended that the tribunal ought not to have considered the evidence of the P.W.1, who is the wife of the deceased and an interested witness.

5. A perusal of the award reveals that the driving licence of the deceased has been marked as Ex.P5, wherein his Date of Birth is given as 30.03.1963. Based on the same,the age of the deceased was taken as 50. As the deceased was working as a temporary driver at the time of the accident, a sum of Rs.6,000/- was fixed as his monthly income and deducting 1/5th towards personal expenses and by adopting multiplier 13, a sum of Rs.7,48,800/- (6000x12x13x4/5) was awarded towards Loss of earnings.

6. In the absence of the salary certificate, the Tribunal, following the ratio laid down in the Syed Sadiq's case (2014 (2) SCC 735) fixed the monthly income of the deceased at Rs.6,000/-, which cannot be said to be excessive. Further, the composition of the family of the deceased shows that the deceased had to maintain many members in the family and, therefore, it would be just and proper to deduct 1/5th towards his personal expenses. The said reasoning of the Tribunal cannot be said to be unreasonable, as the Tribunal has weighed the pros and cons of the scenario and the necessity of the deceased to contribute

much to his family and, therefore, deducted 1/5th for his personal expenses. It is to be pointed out that the Tribunal, while quantifying compensation under the head loss of income, has not taken into consideration the future prospective increase in income. Had the Tribunal considered future prospective increase in income, the compensation would have been much higher. In such circumstances, the compensation awarded by the Tribunal towards loss of income cannot be said to be excessive.

7. Insofar as the contention relating to negligence is concerned, the Tribunal has observed that the complaint was given by the driver of the respondent Corporation, prior to lodging of the complaint by the other side. It is an admitted fact that claimants have not lodged the complaint immediately after the accident. However, the Tribunal has held that a careful analysis of the complaint filed by the driver of the bus reveals that the said complaint has been registered after coming to know about the death of the deceased. The Tribunal has further held that mere lodging of the complaint at the first instance alone cannot be the sole ground to hold that there was no negligence on the part of the driver of the offending bus. The Tribunal has further pointed out that the appellant has not filed the report of the motor vehicle inspector relating to the offending vehicle, whereas the claimants have filed the motor vehicle inspector's report relating to the vehicle driven by the deceased, which clearly reveals that the accident had happened only due to the rash and negligent driving by the driver of the appellant bus.

8. A careful perusal of the documents available on record as also the findings rendered by the Tribunal clearly reveals that the Tribunal has analysed the oral and documentary evidence threadbare and has come to the right conclusion fastening the negligence on the driver of the appellant bus. In such circumstances, this Court is of the considered view that the finding arrived at by the Tribunal is just and proper and is not liable to be interfered with.

9. For the reasons aforesaid, this Civil Miscellaneous Appeal is dismissed, confirming the Judgment and decree of the Claims Tribunal, in M.C.O.P.No.140 of 2014, dated 09.08.2016. No costs.

10. The appellant / Transport Corporation is directed to deposit the entire award amount, along with interest and costs as ordered 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 award 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 fixed 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 attains majority and the 1st claimant is permitted to withdraw the interest accrued thereon once in three months directly from the bank.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

arr/GLN

To

1. The Additional Subordinate Judge,
The Motor Accident Claims Tribunal,
Myladuthurai.

+1 cc to Mr.D.Venkatachalam Advocate sr 11249

C.M.A. No.342 of 2017

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