IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2017

CORAM : THE HONOURABLE Mr. JUSTICE N.SESHASAYEE

CMA.No.1191 of 2004
and CMP.No.6770 of 2004

The Managing Director,
Tamil Nadu State Transport Corporation
Coimbatore Division Ltd.,
37, Mettupalayam Road,
Coimbatore. ...Appellant/Respondent

Vs.

1.Leela

2.Minor.M.Manonmani ...Respondents/Petitioners

Rep by her mother & guardian M.Leela

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988 against the decree and judgment passed by the learned Motor Accident Claims Tribunal (III Additional Subordinate Court-Incharge) Coimbatore passed in MCOP.No.89 of 1999 dated 22.4.2003.

For Appellant :Mr.S.V.Vasantha Kumar
For Respondents :R1 - Dismissed vide Court order dated 21.6.2010
R2-not ready in notice

JUDGMENT

In a road accident that took on 29.3.2998 at 12.00 p.m. one certain Mohan Kumar while he was travelling as a pedestrian at Nanjappa Road, near Arul Theatre, Coimbatore, was fatally knocked down by a bus bearing registration No.TN37 N 0143 belonging to the State Transport Corporation. His young wife and minor child have preferred a claim seeking compensation of Rs.4,50,000/- before the MACT (III Additional Sub Court), Coimbatore in MCOP.No.89 of 1999, against which the Tribunal has passed an award of Rs.2,60,000/-, fastening the liability on the Transport Corporation. Aggrieved with the award passed by the Tribunal, the transport Corporation has come forward with this appeal.

2. The learned counsel for the appellant argued that the fault was that of the cyclist and it is his negligence that had resulted in the accident and the Tribunal ought not to have fastened the entire negligence-component on the driver of the bus. Even if the Court had found that the driver of the vehicle had a possibility to avoid the accident stated, it should have apportioned the accident between the deceased and the driver of the bus. So far as compensation for dependency is concerned the Tribunal has reckoned the income of the deceased at Rs.1,500/- per month and after deducting 1/3rd towards his personal expenses, that leaves to a sum of Rs.1,000/- per month to his family, it has assessed his annual contribution to the family at Rs.12,000/-. The learned counsel contended that the Tribunal has erred in fixing the income at Rs.12,000/- per annum and also in adopting 17 as a multiplier.

3. On a perusal of the records, I find neither of the contentions of the appellant can be sustained. In the aspect of negligence, the trial Court relied on the evidence of P.W.2, the eyewitness in the accident, and found that the driver of the bus was solely negligent in causing the accident. I find that the finding of the Tribunal on this aspect is in order and does not require any interference. On the ground of quantum, the annual income that the Tribunal has fixed is that which is provided in II Schedule of the M.V. Act, which applies essentially to a case under Section 163(A) of the Motor Vehicle Act. This is a case filed under Section 166 of the M.V.Act. To fix any income lesser than what the Tribunal has determined is violative of the scheme for compensation provided in M.V.Act. Even on this floor, I find no merit.

4. In the result, the appeal deserves to be dismissed and the same is done. No costs. The appellant/State Transport Corporation is directed to deposit the amount awarded by the Tribunal less if any already deposited, within four weeks from the date of receipt of a copy of this order whereupon the claimants are permitted to withdraw the same forthwith. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

ds

To

1.The Motor Accident Claims Tribunal
(III Additional Sub Court-Incharge)
Coimbatore.

+1 cc to Mr.S.V.Vasanthakumar Advocate sr 6453

CMA.No.1191 of 2004

gj(co)
aa27/06/2017