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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 02.11.2018

CORAM:

THE HONOURABLE Tmt. JUSTICE S. RAMATHILAGAM

C.M.A.No.3142 of 2006
and M.P.No.3 of 2006

The Managing Director,
Tamilnadu State Transport Corporation,
Kumbakonam. ... Appellant / Respondent

Versus

Priya @ Rampriya ... Respondent / petitioner

Prayer : Civil Miscellaneous Appeal filed under Sections 173 of Motor Vehicles Act, against the Judgment and Decree dated 26.09.2005 made in M.C.O.P.No.440 of 2004 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge), Chidambaram.

For Appellant : Mr. M. Krishnamoorthy

For Respondent : Not ready in Notice

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 26.09.2005 made in M.C.O.P.No.440 of 2004 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge), Chidambaram.

2. The brief facts of the case are as follows :

On 31.07.2004 at about 9.30 p.m., the deceased Venkatesan was proceeding from Kollidam to Sirkali, from North to South direction at the left side of the road. At that time, a Tamil Nadu State Transport Corporation bus bearing Registration No.TN-49-N-1243 came in the opposite direction in the rash and negligent manner and dashed against the deceased and he died on the spot. The accident occurred only due to the rash and negligent driving on the part of the driver of the bus. The claimant/Legal heir of the deceased has claimed a sum of Rs.15,00,000/-as compensation.

3. The appellant/Transport Corporation, in the counter statement, has denied the accident. According to the Transport



Corporation, the other aspects regarding the claim made by the claimant for the loss of income and sum claimed under various heads are excessive. The appellant/Transport Corporation has denied the accident contending that after noticing the deceased coming in the opposite direction, the driver had stopped the bus. But the deceased, without noticing the speed breaker, came in a rash and negligent manner, in an uncontrolled speed, dashed against the bus and he sustained severe injuries. Hence, there is no rash and negligent driving on the part of the driver of the bus. It is also the averment made by the respondent that at the time of accident the deceased was under the influence of liquor. Hence the petition has to be dismissed.

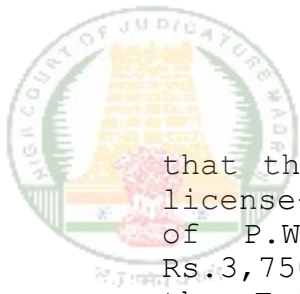
4. The Tribunal, after analyzing the evidence and documents placed before it, has given a finding that it is a rash and negligent driving on the part of the driver of the bus, which caused the accident. The Tribunal has also assessed the compensation based on the age, occupation and income and loss to the family and awarded a sum of Rs.5,65,000/. Aggrieved against the said award, the appellant/ Transport Corporation has preferred this appeal.

5. In the grounds of appeal, the appellant/Transport Corporation has stated that the deceased is responsible for the accident by his negligence driving. The witnesses examined before the Tribunal were all interested witness and there is no natural evidence. The Tribunal has also committed an error by not considering the evidence of RW1. The sum determined by the tribunal, by taking the age of the deceased at 29 years is not based on any document and sum arrived at by the Tribunal, for the loss of income of the deceased at Rs.5,40,000/- is highly excessive.

6. Heard the learned counsel for the appellant and perused the materials available on record.

7. The appellant has argued that the Tribunal has not considered the evidence of RW1. The driver of the bus, who deposed that he immediately stopped the bus, on seeing the motor cycle came in rash and negligent manner. In spite of the same, the rider of the motor cycle dashed against the bus and caused the accident. The Tribunal, without considering the same, fixed liability on the driver of the bus. Though, the appeal has been filed on negligence, liability and quantum, the main argument advanced by the appellant is only with regard to the quantum.

8. It is seen from the evidence of P.W.4, who has deposed before the Tribunal that the deceased was employed in his travel agency and his monthly salary was Rs.1,500/- and his daily allowance would be Rs.150/- to 200/-. The claimant has stated



that the deceased was earning Rs.6,000/- per month. The driving license-Ex.P3 is also filed through P.W.1. As per the evidence of P.W.4, the Tribunal has fixed the monthly income at Rs.3,750/- and after taking 1/3rd towards the personal expenses, the Tribunal has calculated the loss of income by applying multiplier 18 to the age of the deceased who was 29 years, at the time of the accident and arrived at Rs.5,40,000/-.

9. On a perusal of the award, it is seen from the records that the Tribunal has wrongly taken the multiplier as 18 instead of 17. With regard to multiplier, the Hon'ble Apex Court in Sarla Verma and Others Vs. Delhi Transport Corporation and another reported in (2009) 6 SUPREME COURT CASES 121 has laid down principles for applying the multiplier.

10. As per the principles laid down by the Supreme Court in the above said decision, considering the age of the petitioner as 29, the correct multiplier is only 17 and not 18 and therefore, the correct multiplier to be applied in this case is only 17 and not 18. Applying the same, the loss of income is modified as $\text{Rs.}2500 \times 12 \times 17 = \text{Rs.}5,10,000/-$. The tribunal has also awarded a sum of Rs.10,000/ for transport and funeral expenses and a sum of Rs. 15,000/- for loss of consortium and love and affection, the said amount cannot be said to be on the higher side. Considering the period of accident, nature of injuries, disability, age, avocation and income of the petitioner, the amounts awarded on the above said heads, are very much reasonable and not excessive and therefore, there is no need to interfere with the sum awarded under the heads Transportation and Funeral expenses and Loss of Consortium and Love and affection.

11. From the above said discussions, the award passed by the Tribunal is modified and reduced as under:

1.	Loss of Income	-	Rs. 5,10,000
2.	Transportation and Funeral Expenses	-	Rs. 10,000
3.	Loss of Consortium and Love and Affection-		Rs. 15,000

			Rs. 5,35,000

12. In the result, this Civil Miscellaneous Appeal is partly allowed and the award amount is reduced from Rs.5,65,000/- to Rs.5,35,000/- with proportionate interest at 8/- p.a and costs. Consequently, connected miscellaneous petition is closed. No costs.



13. The appellant/Transport Corporation is directed to deposit the entire award amount, in respect of above Appeal as per the order of this Court, with interest and costs, before the Tribunal, after adjusting the amount, if any, already deposited, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer the same to the claimant's bank account through RTGS within one week thereon.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

pds/lpp

To

1. The Motor Accidents Claims Tribunal
(Subordinate Judge),
Chidambaram.
2. The Section Officer,
V.R.Section,
High Court, Madras.

+1 cc to Mr.M.Krishnamoorthy, Advocate, S.R.No.75848

C.M.A. No.3142 of 2006
and M.P.No.3 of 2006

EV(CO)
SSM(07/11/2019)