

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.12.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.1976 & 1977 of 2015

The Managing Director,
Tamil Nadu State Transport
Corporation (Villupuram) Ltd.,
No.3/137, Salamedu,
Vazhuthareddy,
Villupuram 605 602.

.. Appellant
in both C.M.As.

Vs.

1.Thailyalnayagi
2.Minor Mohanraj
3.Minor Jagan
(Minors 2 and 3 rep. By next friend
guardian, mother 1st respondent)
4.Sarojini
5.Radhakrishnan
6.The National Insurance Co. Ltd.,
Rep. By its Branch Manager,
Muruga Complex, K.K.Road, Villupuram.

.. Respondents in C.M.A.No.1976/2015

1.Vijaya
2.Minor Shalineer
3.Minor Gokul
(Minors 2 and 3 rep. By next friend,
guardian Mother 1st respondent)
4.Radhakrishnan

5.The National Insurance Co. Ltd.,
Rep. By its Branch Manager,
Muruga Complex, K.K.Road, Villupuram.

.. Respondents in C.M.A.No.1977/2015

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 19.12.2013 made in M.C.O.P.Nos.93 & 94 of 2010 on the file of the Principal District Court, (Motor Accident Claims Tribunal), Villupuram.

For Appellant : Mr.K.J.Sivakumar

C O M M O N J U D G M E N T

These Civil Miscellaneous Appeals have been filed challenging the award fastening the liability on the appellant and quantum of compensation granted to the claimants, by the Tribunal vide award and decree dated 19.12.2013 made in M.C.O.P.Nos.93 & 94 of 2010 on the file of the Principal District Court, (Motor Accident Claims Tribunal), Villupuram.

2.Both the appeals are arising out of the common award and the same accident and hence, they are disposed of by this common judgment.

3.The appellant is the 1st respondent in M.C.O.P.Nos.93 and 94 of 2010 on the file of the Principal District Court, (Motor Accident Claims Tribunal), Villupuram. The respondents 1 to 4 in C.M.A.No.1976 of 2015 filed M.C.O.P.No.93 of 2010, claiming a sum of Rs.20,00,000/- as compensation for the death of one Elumalai, husband of the 1st respondent, father of the respondents 2 & 3 and son of the 4th respondent, who died in the accident that took place on 30.04.2010. The respondents 1 to 3 in C.M.A.No.1977 of 2015 filed M.C.O.P.No.94 of 2010, claiming a sum of Rs.20,00,000/- as compensation for the death of one Sampath, husband of the 1st respondent and father of the respondents 2 & 3, who died in the accident that took place on 30.04.2010.

4.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to the rash and negligent driving by the driver of the bus belonging to the appellant-Transport Corporation and awarded a sum of Rs.8,41,000/- and Rs.8,36,000/- as compensation to the claimants in both the claim petitions respectively and directed the appellant-Transport Corporation to pay the same.

5.Against the said award dated 19.12.2013 made in M.C.O.P.Nos.93 & 94 of 2010 on the file of the Principal District Court, (Motor Accident Claims Tribunal), Villupuram, the appellant-Transport Corporation has come out with these appeals.

6.According to the learned counsel for the appellant, the Tribunal erred in fixing negligence on the part of the driver of the bus belonging to the Transport Corporation, relying on the FIR and evidence of P.Ws.1 and 2. P.W.1 is not an eye-witness to the accident. The accident occurred only due to the rash and negligent driving by the deceased in M.C.O.P.No.93 of 2010, who drove the motor cycle bearing Registration No.PY-01-AP-3715, at the time of the accident.

The Tribunal failed to consider the evidence of R.W.1, driver of the bus, who has deposed that the accident has occurred only due to the negligent act of the rider of the motor cycle. The respondents/claimants have not proved the age and income of the deceased. The Tribunal erred in applying the multiplier of '17', instead of '16'. The amounts awarded by the Tribunal under all other heads are excessive and prayed for setting aside the award with regard to fastening the liability on the appellant.

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

8. From the materials on record, it is seen that the appellant has examined P.W.2, who is an eye-witness to the accident. FIR is registered against the driver of the bus who was examined as R.W.1. From the award of the Tribunal, it is seen that in the FIR, it has been stated that after dashing against the motor cycle, the bus ran over the deceased. In view of the nature of accident alleged by the respondents 1 to 3, substantiated by Ex.P1, FIR and evidence of P.W.2, the Tribunal has rightly fixed the negligence on the part of the driver of the bus and did not accept the evidence of the driver who was examined as R.W.1. The findings given by the Tribunal is correct and there is no reason to interfere with the same.

9. As far as the quantum of compensation is concerned, the Tribunal has fixed the notional income of both the deceased at Rs.6,000/- per month and after deducting 1/3rd towards the personal expenses of the deceased and by applying the multiplier of '17', awarded a sum of Rs.8,16,000/- [Rs.6,000 x 12 x 17 x 2/3] as compensation for the loss of income. As far as the contention of the learned counsel for the appellant that the Tribunal applied multiplier of '17' instead of '16' is concerned, both the deceased were aged about 32 years at the time of accident and the Tribunal has not granted any amounts towards future prospects. The Tribunal has granted a sum of Rs.10,000/- towards loss of consortium to the 1st respondent in both the appeals and a sum of Rs.5,000/- each to the respondents 2 & 3 in C.M.A.No.1976/2015 and respondents 2 to 4 in C.M.A.No.1977/2015, under the head of general damages. In view of the fact that the Tribunal has not granted any addition for the deceased aged 32 years towards future prospects and the Tribunal has awarded a sum of Rs.20,000/- and Rs.25,000/- respectively in both the claim petitions, under the heads of loss of consortium and general damages, the multiplier applied by the Tribunal need not be modified. The compensation awarded by the Tribunal is just compensation

and is not excessive. There is no perversity in the award of the Tribunal warranting interference by this Court.

10. In the result, both the Civil Miscellaneous Appeals are dismissed and sum of Rs.8,41,000/- and Rs.8,36,000/- awarded by the Tribunal as compensation to the claimants in both the claim petitions respectively with interest and costs are confirmed. The appellant is directed to deposit the award amount with interest and costs, less the amount already deposited, if any, within a period of twelve weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.Nos.93 and 94 of 2010 respectively. On such deposit, the respondents 1 and 4 in C.M.A.No.1976 of 2015 and the 1st respondent in C.M.A.No.1977 of 2015 are permitted to withdraw their share of the award amount with interest and costs, as per the ratio of apportionment fixed by the Tribunal, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. The shares of the minor respondents 2 & 3 in both the appeals are directed to be deposited in any one of the Nationalized Bank, till they attain majority. The 1st respondent, mother of the minor respondents 2 & 3 in both the appeals is permitted to withdraw the accrued interest amount once in three months for the welfare of the minor respondents 2 & 3. No costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

gsa
To

1. The Principal District Judge,
(Motor Accident Claims Tribunal), Villupuram.

+1cc to Mr. K.J.Sivakumar, Advocate SR.No. 85399

C.M.A.Nos.1976 & 1977 of 2015

A.SK(14/03/2019)

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