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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.431 of 2018

1.Amsaveni
2.Minor.Govindaraji
3.Minor.Vinothkumar
4.Minor.Vijayakanth
5.Minor.Sasikumar
[Minors 2 to 5 rep.by their mother
Amsaveni]
6.Lakshmi Ammal ..Appellants/Claimants

Versus

1.Managing Director,
Tamilnadu State Transport Corporation Ltd.,
Vellore.
2.Krishnammal
[Notice to the 2nd respondent is dispensed with]
..Respondents/Respondents

Civil Miscellaneous Appeal filed under section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 07.09.2012 made in M.C.O.P.No.196 of 2010 on the file of the Motor Accident Claims Tribunal, Additional District Court and Sessions Court No.3, Vellore at Triupattur, Vellore District.

For Appellants : Mr. PA.Sudesh Kumar

For Respondents : Mr. K.J.Sivakumar [for R1] R2 D/W

J U D G M E N T

The petitioners/claimants have filed this appeal against the judgment and decree dated 07.09.2012 made in M.C.O.P.No.196 of 2010 on the file of the Motor Accident Claims Tribunal, Additional District Court and Sessions Court No.3, Vellore at Triupattur, Vellore District.

2. For the sake of convenience, the parties are referred to



hereunder according to their litigative status before the Tribunal.

3. The case of the petitioners/claimants is that on 18.03.1997 at 4.00 a.m., while the deceased was proceeding from North to South on the extreme left side of the road near Fakkirithakka Railway Gate junction road and the respondent bus bearing Registration No.TN-23-N-0750 came at high speed dashed on the deceased, causing him fatal injuries, resulting in his death on the way to hospital. The accident occurred only due to the rash and negligent driving of the respondent bus driver. The deceased was aged 50 years and by working as a Bullock cart driver was earning Rs.7,500/- per month. The petitioners/claimants who are the wife, children and mother of the deceased were depending on his earnings. Thus, the petitioners/claimants seek a sum of Rs.10,00,000/- as compensation from the respondents.

3. On the other hand, opposing the claim of the petitioners/claimants, by filing counter, the 1st respondent/Transport Corporation contends that deceased died in the accident on 18.03.1997 and the petitioners/claimants have lost the breadwinner of the family. The 2nd respondent stated that he had filed MCOP.No.562/1997 and the same was transferred to Fast Track Court, Thirupathur, where it is renumbered as MCOP.No.230 of 2002 and after enquiry, the award was passed on 09.06.2004 granting Rs.70,000/- as compensation as the sole breadwinner of the family died. Likewise, filing counter, the 1st respondent opposed the claim petition by stating on the occurrence date, while the respondent's bus was proceeding near Pakkirithakka Thendral nagar, a load lorry was parked on the side of the road and at that time the deceased came in the opposite direction in the bullock cart and without noticing the oncoming bus, dashed on the bus, resulting in the accident. Another legal heir of the deceased separately filed MCOP.No.562 of 1997 seeking compensation for the same accident. As such the respondents are not liable to pay any compensation. Thus, the 1st respondent/Transport Corporation sought for dismissal of the petition.

4. Before the Tribunal, the petitioners/claimants examined P.Ws.1 and 2, produced documents Exs.P.1 to P.5 to prove their claim. On the side of the respondents R.W.1 was examined and produced documents Exs.R.1 and R.2 to counter the claim of the petitioners/claimants.

5. The Tribunal, after analysing the evidence on record, found that the negligence of the 1st respondent vehicle driver alone caused the accident, passed an award for a sum of Rs.1,79,000/- payable by the 1st respondent to the



6. Heard both sides and perused the available materials on record.

8. Per contra, the learned counsel for the 1st respondent/Transport Corporation contends that the Award passed by the Tribunal itself is on higher side and there is no need to enhance it further. Thus, the 1st respondent/Transport Corporation sought for dismissal of the Appeal.

10. Even though, the respondent bus driver deposed as R.W.1 and stated that it was only due to negligence of the bullock cart driver, the accident occurred, there is no reason as to why R.W.1 did not lodge any complaint against the said bullock cart driver. R.W.1 in his Cross examination had admitted to his driving of the bus and also about the registration of the F.I.R and also lodging of the final report against him. As such, it is clear that the accident occurred only due to negligence of the 1st respondent bus driver as evidenced by P.W.2's oral version corroborated by contents of Ex.P.1 - F.I.R and Ex.P.2 - Charge Sheet. Thus, this Court is of the view that the negligence of the 1st respondent bus driver alone is the cause for the accident.



11. The petitioners/claimants states that the deceased was aged 50 years and by working as a bullock cart driver and doing agricultural work, was earning Rs.7,500/- per month. It is clear from Ex.P.4 - Post mortem report that the deceased was aged 55 years and in the absence of any other material regarding the age of the deceased, the Tribunal has correctly fixed the age as '55', on the basis of Ex.P.4 - Post mortem report. In respect of the income of the deceased, no proof is available. However, considering the factum of self employment of the deceased as bullock cart driver, it will be appropriate to fix the notional monthly income at Rs.3,000/- per month as he will be earning Rs.100/- per day. As the number of dependants are stated to be 6, 1/4th of the income is deducted towards personal expenses. Thus, his monthly contribution to the family after deducting 1/4th amount will be,

$$[\text{Rs.3,000} - (\text{Rs.3,000} \times \frac{1}{4})] = \text{Rs.2,250/-}.$$

As the deceased was aged 55 years, the correct multiplier to be applied is '11'. Thus, the loss of dependancy is calculated as follows,

$$\text{Rs.2,250} \times 12 \times 11 = \text{Rs.2,97,000/-}$$

Thus, a sum of Rs.2,97,000/- is granted as compensation under the head "Loss of Dependancy". The amounts awarded by the Tribunal under other heads are proper and the same is confirmed.

13. Accordingly, the compensation Awarded by the Tribunal stands modified as follows:-

Sl. No.	Head	Amount granted by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
1	Loss of Dependancy	1,32,000.00	2,97,000.00
2	Funeral Expenses	5,000.00	5,000.00
3	Love and Affection	30,000.00	30,000.00
4	Transportation	2,000.00	2,000.00
5	Bullock died and damages to the cart	10,000.00	-
	Total	1,79,000.00	3,34,000.00

14. In the result, the Civil Miscellaneous Appeal is Allowed as follows:-

(i) The award of the Tribunal is enhanced to Rs.3,34,000/- from Rs.1,79,000/-.

(ii) The Award amount will carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

(iii) In view of the above modified award



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amount, the 1st respondent/Transport Corporation is directed to deposit the award amount, less the amount, if any, already deposited, along with accrued interest within a period of six weeks from the date of receipt of a copy of this judgment.

(iv) The apportionment of the modified enhanced Award amount is as follows:

1 st petitioner/claimant	-	40%
Petitioners/Claimants 2 to 5	-	10% each
6 th petitioner/claimant and 2 nd respondent each	-	10%

(v) On such deposit, the major petitioners/claimants namely 1st, 6th petitioners/claimants and second respondent are permitted to withdraw their respective shares in the amount awarded as above by filing proper application before the Tribunal. The Tribunal shall pass appropriate directions for the disbursal of the amount as stated supra on filing of such application.

(vi) The share of the minors petitioners/claimants are directed to be deposited in any one of the nationalised bank till they attain majority. The 1st petitioner/claimant/guardian of the 2nd to 6th petitioners/claimants is permitted to withdraw the accrued interest once in three months.

(vii) The second respondent is directed to pay the necessary Court fee.

No costs.

Sd/-
Assistant Registrar (CO)

//True copy//

Sub Assistant Registrar

bri

To

1. The Motor Accident Claims Tribunal,
Additional District Court and Sessions
Court No.3, Vellore at Triupattur,
Vellore District.

2. The Section Officer,



V.R.Section, High Court, Madras.

+1cc to Mr.PA.Sudeshkumar, Advocate SR.No.45997

+1cc to Mr.K.J.Sivakumar, Advocate SR.No.46432

C.M.A.No.431 of 2018

SS (CO)

GMV (26/11/2018)