IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :18.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.960 of 2010
AND
MP.No.1 of 2010

The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Coimbatore Division I
37, Mettupalayam Road,
Coimbatore. ... 2nd Respondent/Appellant

Vs

1.Deivathal

2.D.Kanneeswari
Rep.by mother & next friend 1st respondent

3.D.Subbulakshmi

4.D.Shanmughavalli

5.Nasrudeen [R5 Driver Given up]
...Petitioners/Respondents 1 to 4

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the fair and decreetal order dated 16.06.2009 passed in M.C.O.P.No.65 of 2005 by the Sub Judge, Motor Accident Claims Tribunal, Udumalpet.

For Appellant : Mr.S.S.Swaminathan

For Respondent : Mr.K.Varadha Kamaraj (for R1 to R4)
R5 - Exparte

JUDGMENT

The instant appeal has been filed by the Transport Corporation challenging the Award dated 16.06.2009, passed by the Motor Accident Claims Tribunal, Learned Sub Judge, Udumalpet in M.C.O.P.No.65 of 2005.

2.The brief facts leading to the filing of the instant appeal are as follows:

(i)One S.K.Dhandapanigounder died on 11.09.2004, as a result of an accident caused by a bus bearing Registration No.TN-38-N-0087 owned by the Appellant Transport Corporation.

(ii)The dependents of the deceased Dhandapanigounder, who are the respondent Nos.1 to 4 in this appeal preferred a claim before the Motor Accident Claims Tribunal in M.C.O.P.No.65 of 2005, seeking a compensation of Rs.10,00,000/- for the death of Dhandapanigounder.

(iii)The Motor Accident Claims Tribunal by its Award dated 16.06.2009 in M.C.O.P.No.65 of 2005, directed the Appellant Transport Corporation to pay the respondent Nos.1 to 4 a sum of Rs.5,85,000/- together with interest at the rate of 7.5% per annum from the date of claim till the date of realization.

3.Aggrieved by the Award dated 16.06.2009, passed by the Motor Accident Claims Tribunal in M.C.O.P.No.65 of 2005, the instant appeal has been filed by the Appellant Transport Corporation.

4.Heard, Mr.S.S.Swaminathan, learned Counsel for the Appellant and Mr.K.Varadha Kamaraj, learned Counsel for the respondent Nos.1 to 4.

5. According to the learned Counsel for the Appellant, without any basis, the Tribunal has assessed the monthly income of the deceased at the time of the accident at Rs.12,000/-. Further, the Tribunal has also failed to deduct 1/3rd towards personal expenses of the deceased considering the fact that there were four dependents namely respondent Nos.1 to 4.

6.The learned Counsel for the Appellant further contended that the respondent Nos.1 to 4 did not file any bank statement or income tax return before the Tribunal to establish that the deceased at the time of the accident was earning a monthly income of Rs.12,000/-. According to him, without any basis the Tribunal has assessed the monthly income of the deceased at Rs.12,000/-.

7.Per contra, the learned Counsel for the respondent Nos.1 to 4 would submit that respondents No.1 to 4 before the Tribunal have filed a shop license which is marked as Ex.P.9 which will prove that the deceased was running a grocery shop at the time of the accident. He also submitted that to prove that the deceased was doing milk vending business, Ex.P.11 was also marked before the Tribunal. The learned Counsel further contended that the second respondent in the instant appeal is a special child and a pleading was also made by the respondent Nos.1 to 4 in the claim petition as well as in the proof affidavit. Further, the learned Counsel have contended that all the children of the deceased are daughters and excepting for the second respondent who is a special child the remaining two daughters are all married and wife was also an aged person at the time of death of Dhandapanigounder. Considering all these factors, according to him, the Tribunal has rightly granted compensation towards loss of future earnings.

8.This Court after having considered the materials available on record and after having examined the impugned Award and after hearing the submissions of the respective counsels observes the following:

(a)No contra evidence has been produced by the Appellant before the Tribunal to disprove the claim of the respondent Nos.1 to 4 that the deceased was running a grocery shop at the time of his death due to the accident caused by the bus owned by the Appellant Transport Corporation.

(b)The second respondent is a special child. The Appellant has also not cross examined on the contention of the respondent Nos.1 to 4 that the second respondent is a special child. Therefore, it can be presumed that the statement of the respondent Nos.1 to 4 that the second respondent is a special child is true.

(c)At the time of the death of S.K.Dhandapanigounder, his wife was also an aged person. The deceased at the time of death was 67 years old, and has left behind three children namely the respondents two, three and four who are all daughters and two of them were already married at the time of death. Being a grocery shop owner, somebody has to manage the day-to-day affairs of the shop. Since two of his daughters were already married and the third one is a special child, certainly the income generated while the deceased was alive would have been reduced after his death. Considering all these factors, the Tribunal has rightly awarded compensation towards loss of future earnings to the respondent Nos.1 to 4.

(d)The Tribunal has also assessed the monthly income of the deceased at the time of the accident at Rs.12,000/-. There is a finding given by the Tribunal that the Appellant has not cross examined on the claim made by the respondent Nos.1 to 4 that the deceased was earning Rs.12,000/- per month on the day of his death.

9.In the considered view of this Court, the Tribunal has rightly assessed the monthly income of the deceased on the date of his death as Rs.12,000/-. Being a fatal accident and considering the avocation of the deceased, the Tribunal has rightly awarded a just compensation to the respondent Nos.1 to 4.

10.In the light of the above observations, this Court is of the considered view that there is no merit in the instant appeal. Accordingly, the appeal is dismissed. Consequently, the connected miscellaneous petition is closed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

mtl/dpq

To

1.The Sub Judge,
Motor Accident Claims Tribunal,
Udumalpet.

2. The Section Officer,
Vernacular Section,
Madras High Court.

3. The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Coimbatore Division I
37, Mettupalayam Road,
Coimbatore.

+1cc to Mr.S.S.Swaminathan, Advocate SR.No.64553

+1cc to Mr.V.T.Narendiran, Advocate SR.No.64507

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AND
MP.No.1 of 2010

GMY(22/10/2018)