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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 22.12.2017

Pronounced on : 04.06.2018

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A. (MD) No.1184 of 2017

and

C.M.P. (MD) .No.11765 of 2017

The General Manager,
State Express Transport Corporation,
No.2, Pallavan Salai,
Chennai-600 002.

... Appellant/Respondent

Vs.

1.Sobana

2.Minor Visali

(The minor 2nd respondent represented through her
mother and guardian of 1st respondent)

3.Balusamy

4.Pushbavalli

... Respondents/Petitioners

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 to set aside the award and decree made in M.C.O.P No.98 of 2014 dated 16.11.2016 on the file of the Motor Accident Claims Tribunal / Principal District Court, Ramanathapuram.

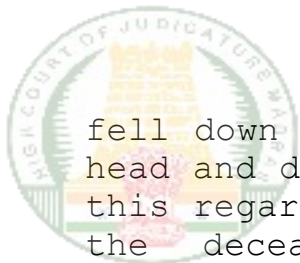
For Appellant : Mr.P.Prabhakaran

For R1, R2 & R4 : Mr.M.Suresh Kumar

JUDGMENT

Aggrieved by the award dated 16.11.2016 made in M.C.O.P.No.98 of 2014 on the file of the Motor Accident Claims Tribunal / Principal District Court, Ramanathapuram, the Tamil Nadu State Transport Corporation has filed this appeal both on grounds of quantum as well as negligence.

2.On 10.11.2013 at about 08.45 a.m. the deceased Kannan was travelling in the bus belonging to the appellant corporation. It is the case of the claimants that the corporation bus driver had applied sudden brake, as a result of which, the deceased Kannan



fell down on the back wheel of the bus and the wheel ran over his head and died on the spot. Crime No.481 of 2013 was registered in this regard. The claimants are the wife, child and the parents of the deceased. A sum of Rs.50,00,000/- was claimed as compensation.

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3.The appellant / Corporation denied the allegations levelled in the claim petition.

4.The case of the Corporation was that the deceased was standing on the steps and that there was sudden crossing of two bicycles on the road. In order to avert the accident, the bus driver applied the sudden brake. The deceased was standing on the foot board with lot of luggage and that is why he lost balance and fell down. The amount of compensation claimed was also contested as excessive.

5.Before the Trial Court, the claimants examined themselves and marked eight documents. On the side of the respondent only the bus conductor was examined. The driver of the bus was however not examined. This Court is of the view that not only the bus conductor, but also the bus driver was equally an important witness. His non examination does affect the case of the corporation. This Court is therefore of the view that no ground has been made out for interfering with the findings of the Tribunal that the Transport Corporation driver alone was responsible for the accident. This finding is based on credible evidence. This finding is based on proper appreciation of the evidence on record. The deceased was aged about 34 years at the time of the accident. He was the President of the local Panchayat. The claimants claimed that he was earning around seven lakhs per annum. But no income proof has been adduced. The accident took place in November 2013. In the absence of income proof and taking into account the fact that the agriculture is not having scope for generating substantial income, this Court is of the view that the income of the deceased could be notionally fixed at Rs.8,000/- per month. Since the deceased was self employed and below the age of 40 years, 40% should be added towards future prospects $(Rs.8,000/- * 40/100) = Rs.3,200/- + Rs.8,000 = Rs.11,200/-$. Since the deceased had four dependants, $1/4^{th}$ deduction has to be made $(Rs.11,200 * 1/4 = Rs.2,800)$ $Rs.11,200 - Rs.2,800 = Rs.8,400$. Since he was aged 34 years, the relevant multiplier will be 16 $(Rs.8,400 * 12 * 16) = Rs.16,12,800/-$. For Loss of Consortium, for Funeral expenses and for loss of estate as per the **2017 (2) TNMAC 609 (National Insurance Company Vs. Pranay Senthil and others)**, dated 31.10.2017, a sum of Rs.70,000/- can be awarded. For loss of love and affection to the claimants 2 to 4 a sum of Rs.1,00,000/- can be awarded. For transportation a sum of Rs.17,200/- can be awarded. Therefore, a sum of Rs.18,00,000/- can be awarded in all these heads.



6. Therefore the compensation payable to the claimants will have to be reduced from Rs.21,10,000/- to Rs.18,00,000/-. The award made in M.C.O.P.No.98 of 2014 dated 16.11.2016 on the file of the Motor Accident claims Tribunal / Principal District Court, Ramanathapuram is modified accordingly. The claimants will be entitled to take the same in the same ratio and in the same manner as directed by the Tribunal below.

7. In the result, the Civil Miscellaneous Appeal is partly allowed and the judgment and decree made in M.C.O.P.No.98 of 2014 dated 16.11.2016 on the file of the Motor Accident claims Tribunal / Principal District Court, Ramanathapuram is modified accordingly. The appellant / Transport Corporation is directed to deposit the entire compensation amount of Rs.18,00,000/- with interest at the rate of 7.5% per annum with costs, from the date of petition till the date of realization, within a period of eight weeks from the date of receipt of a copy of this judgment, less the amount already deposited, if any. On such deposit, the claimants are entitled to withdraw the same, as apportioned by the Tribunal, less the amount already withdrawn by them, if any, by filing proper application before the Tribunal. The share of the minor claimant / respondent no.2 shall be deposited in any one of the Nationalised banks, till she attains majority. The natural guardian, the first respondent is permitted to withdraw the interest there from once in three months directly from the Bank. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To

1. The Principal District Judge,
Motor Accident claims Tribunal,
Ramanathapuram.
2. The Record Keeper, V.R. Section,
Madurai Bench of Madras High Court, Madurai. (2 copies)

+ 1 cc TO Mr.M.Suresh Kumar , Advocate in SR No. 66519

tsg

AE/JC/SAR4/18.06.2018/3P/5C

JUDGMENT MADE IN
C.M.A. (MD) No.1184 of 2017
and
C.M.P. (MD) .No.11765 of 2017
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