



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.04.2018

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CMA(MD)No.154 of 2014

and

M.P(MD)No.1 of 2014

The Managing Director,
Tamil Nadu State Transport Corporation Limited,
Thanjavur. ... Appellant/Respondent

vs.

1)C.Kumar @ Mohan Kumar
2)K.Kannadasan
3)K.Iyappan
4)K.Abimannan ... Respondents/Petitioners

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree made in MCOP.No.1471 of 2013 dated 03.09.2013 on the file of the Motor Accident Claims Tribunal/Special District Court, (MCOP Cases), Tiruchirappalli.

For Appellant : Mr.P.Prabhakaran
For R1 : No appearance
For R2 to R4 : Mr.J.Anandkumar

JUDGMENT

This Civil Miscellaneous has been filed against the judgment and decree made in MCOP.No.1471 of 2013 dated 03.09.2013 on the file of the Motor Accident Claims Tribunal/Special District Court, (MCOP Cases), Tiruchirappalli.

2.It is the case of the respondents/claimants that on 06.12.2010 about 06.00 p.m., while the deceased Poosaiyammal, wife of the 1st respondent and mother of the respondents 2 to 4 attempted to board a bus bearing registration No.TN-49N-1178 in Trichy Central Bus stand, the driver of the bus without noticing the same, started the bus on getting the signal from the conductor of the bus, due to which, the rear wheel of the transport corporation bus ran over the deceased resulting in instantaneous death of the deceased Poosaiyammal. The claimants filed the above claim petition claiming compensation of Rs.10,00,000/-. The appellant transport corporation filed counter denying the manner



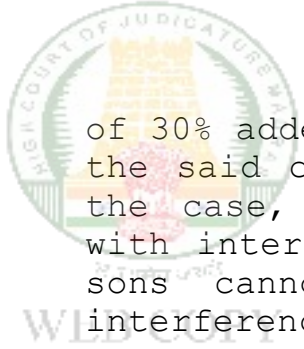
of accident, contending that it is only the deceased who attempted to board the running bus and invited the accident and therefore, the appellant is not liable to pay compensation.

3. On analysis of oral and documentary evidence, the Tribunal fixed negligence on the driver of the transport corporation bus and fastened the liability on the appellant to pay compensation and awarded compensation of Rs.6,58,400/- with interest @ 7.5% per annum from the date of petition till the date of deposit. Challenging the negligence and quantum of compensation, the appellant corporation has filed this appeal.

4. Perusal of the impugned judgment shows that husband of the deceased examined himself as PW1 and reiterated the manner of accident. One Solaimurugan who is stated to have witnessed the accident was examined as PW2, who deposed that while the deceased was boarding the bus, without noticing her, the driver of the bus started the same in a rash and negligent manner, due to which, the deceased fell down and rear wheel of the bus ran over her. On behalf of the appellant, driver of the bus was examined as RW1 who deposed that the deceased attempted to board the running bus, fell down and therefore, the accident had occurred. The Tribunal found that as to the manner of accident, the averments in the claim petition, evidence of PW1 and PW2 are corroborated by Ex.P1-FIR. On the contra, the evidence of RW1 did not support with any other independent witness nor documents. Therefore, the Tribunal fixed negligence on the bus driver and consequently fastened liability on the appellant to pay compensation to the claimants, which in my considered opinion cannot be said to be perverse. Hence, the finding of the Tribunal regarding negligence is confirmed.

5. As regards quantum of compensation, the claimants claimed that by working as agricultural and construction coolie, the deceased earned Rs.5,000/- per month. Though Identity Card and Membership Chit was produced in support of the avocation of the deceased, the Tribunal fixed notional income of Rs.4,500/- per month. Thereafter, the Tribunal deducted 1/3rd of income towards the personal expenses of the deceased and added 30% of income towards future prospects. After applying '13' multiplier according to the age of the deceased namely, 49 as per the Sarla Verma's case, the Tribunal awarded loss of income at Rs.6,08,400/-. Apart from that, the Tribunal awarded Rs.40,000/- towards loss of love and affection to the claimants and Rs.10,000/- towards transportation and funeral expenses.

6. Though the learned counsel for the appellant contended that as per the recent judgment of the Hon'ble Supreme Court in National Insurance Company Limited vs. Pranay Sethi and others (Special Leave Petition (Civil) No.25590 of 2014 dated 31.10.2017), 25% of the income should be added towards future prospects instead



of 30% added by the Tribunal, this Court is not inclined to accept the said contention. Considering the facts and circumstances of the case, the overall quantum of compensation of Rs.6,58,400/- with interest at 7.5% per annum awarded to the husband and three sons cannot be said to be excessive or bonanza warranting interference by this Court.

7.The appellant is directed to deposit the entire award amount with proportionate accrued interest, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit, the respondents/claimants are permitted to withdraw their respective shares without filing any formal petition before the Tribunal.

Accordingly, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (AD-II)

/True Copy/

Sub Assistant Registrar

To

The Judge,
Special District Court, (MCOP Cases),
Motor Accident Claims Tribunal,
Tiruchirappalli.

Copy To:-

The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+ 1 CC TO Mr.P.PRABHAKARAN, ADVOCATE IN SR No. 60957
+ 1 CC TO Mr.J.ANANDKUMAR, ADVOCATE IN SR No. 60952

BALA
TE/KKR/SAR-3 : 25/05/2018 : 3P/6C

CMA (MD) No.154 of 2014
12.04.2018