



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.07.2018

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD).No.539 of 2016
and
CMP(MD) No.6548 of 2016

The Managing Director,
Tamil Nadu State Transport Corporation Kumbakonam Division
Railway Station New Road,
Kumbakonam Taluk,
Thanjavur District.

... Appellant/ Respondent

Vs.

1.R.Sabura Banu
2.R.Jannath Kani

... Respondents/Petitioners

PRAYER:- Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 27.11.2015, made in MCOP No.755 of 2014 on the file of Motor Accident Claims Tribunal/ Special District Court, Thanjavur.

For Appellant : Mr.P.Prabhakaran
For Respondents : Mr.S.Rajaprabu

JUDGMENT

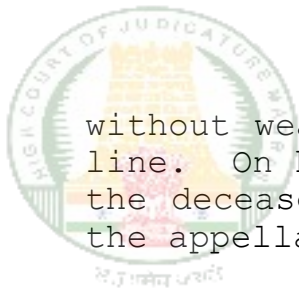
Assailing over the judgment and decree passed by the Motor Accident Claims Tribunal/ Special District Court, Thanjavur. in M.C.O.P.No.755 of 2014 dated 27.11.2015, the present civil miscellaneous appeal has been filed.

2. Heard the learned Counsel appearing for the respective parties and perused the records carefully.

3. It is a case of fatal and the tribunal has awarded a sum of Rs.9,83,000/- as compensation, against which, the Appellant/Transport Corporation company is before this Court.

4. Though several grounds are raised in the memorandum of grounds, the main grounds on which the appellant Transport Corporation has filed this appeal are on negligence and quantum.

5. The learned Counsel for the appellant submitted that the tribunal failed to fix entire negligence on the deceased who drove the two wheeler with a pillion rider, in order to overtake the two wheeler which was going ahead, in a rash and negligent manner



without wearing helmet and also drove the vehicle beyond the median line. On his own negligence, he invited the accident and therefore, the deceased was solely responsible for the accident and therefore, the appellant is not liable to pay compensation to the respondents.

6. On a perusal of the records, it is seen that the tribunal, at paragraph Nos.5 to 10 of the judgment, has elaborately discussed the ground of negligence and has categorically held that the driver of the appellant Corporation invited the accident and the same does not warrant any interference at the hands of this Court.

7. Insofar as the quantum is concerned, the learned Counsel for the appellant contended that the tribunal has erred in fixing the monthly income of the deceased as Rs.6,000/-. It is further contended that the tribunal has added 50% of additional income towards future prospects instead of 40%. As per the latest verdict of the Hon'ble Supreme Court, in the case of National Insurance Company Ltd., v. Pranay Sethi and others, decided on 31.10.2017, this Court is of the view that future prospects would be 40%, since the deceased was below the age of 40 years at the time of accident and employed himself at Thanjavur Dargah as a Labour and therefore, the same deserves interference. Hence, the award passed by the tribunal under the head dependency needs interference and the same reads as under:

- ((Income of the deceased + future prospects) - personal expenses) is ((Rs.6,000/- + Rs.2,400/- (40%)) - Rs.4,200/- (1/2)) amounts to Rs.4,200/-.
- By applying the multiplier method, it would be (Rs.4,200/- x 12 x 17) amounting to Rs.8,56,800/-.
- Therefore, the loss towards dependency is reduced and the same is fixed at Rs.8,56,800/-, instead of Rs.9,18,000/-.

8. The learned Counsel for the appellant would further submit that the claimants are sisters, so the compensation under the head of love and affection is also high. Other than dependency, the tribunal has awarded compensation on four heads, viz., Rs.25,000/- for funeral expenses and Rs.10,000/- transportation expenses; Rs.10,000/- for loss of estate; Rs.20,000/- for loss of love and affection, totalling a sum of Rs.65,000/-. These are all nothing but compensation on conventional heads. In my considered opinion, sisters are also having love and affection and the deceased is aged about 27 years and his loss to the family will not be compensated through money and therefore, the award of the tribunal under conventional heads is reasonable and the same does not warrant any interference.

9. In result, this civil miscellaneous appeal is partly allowed and

- the compensation awarded by the tribunal is reduced and the total award amount is fixed at Rs.9,21,800/- [Rs.9,83,000/- awarded by the tribunal - Rs.61,200/- decreased by this Court towards loss of dependency].



- The appellant is directed to deposit the entire sum of Rs.9,21,800/- [Rupees Nine Lakhs Twenty One Thousand and Eight Hundred only] towards compensation with interest @ 7.5%, less the sum already deposited, if any, within a period of eight 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 with accrued interests and costs as apportioned by the Tribunal, less the amount already withdrawn by them, if any, by filing proper application before the Tribunal.
- There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.
- If the entire compensation awarded by the tribunal, has already been deposited, then the appellant/Transport Corporation is at liberty to withdraw the excess amount, if any.

Sd/-
Assistant Registrar(T&P)

/True Copy/

Sub Assistant Registrar

To

The Special District Judge,
Motor Accidents Claims Tribunal,
Thanjavur.

COPY TO:

The Record Keeper,
Vernacular Records Section,
Madurai Bench of Madras High Court,
Madurai. **(Two Copies)**

+1cc to M/S.P.Prabhakaran, Advocate SR.No. 70916

+1cc to M/S.S.Rajaprabu, Advocate SR.No. 70870

C.M.A(MD).No.539 of 2016
03.07.2018

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JM/SKN RSK/SAR 1/20.07.2018/3P/6C