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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 19.06.2018
(Reserved on 26.04.2018)
CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CMA(MD)No.300 of 2018
and
CMP(MD)No.4143 of 2018

Tamil Nadu State Transport Corporation,
Karaikudi,
Through its Managing Director. ... Appellant

vs.

1)Subramanian
2)Kannathal ... Respondents

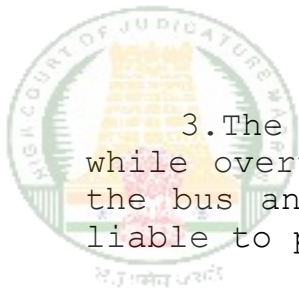
Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree made in MCOP.No.255/2016 dated 22.03.2017 on the file of the Motor Accidents Claims Tribunal/Chief Judicial Magistrate Court, Sivagangai.

For Appellant : Mr.P.Prabhakaran
For R1 and R2 : Mr.V.Sitharanjandas

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award and decree made in MCOP.No.255/2016 dated 22.03.2017 on the file of the Motor Accidents Claims Tribunal/Chief Judicial Magistrate Court, Sivagangai.

2.It is the case of the respondents/claimants that on 01.05.2007 about 06.30 hours, one Venkatesan was riding a motorcycle bearing registration No.TN-63-F-1802 seating the deceased/Kannan as pillion on Madurai-Rameshwaram National Highway and at that time, a bus bearing registration No.TN-63-N-0969 which came in the opposite direction driven by its driver in a rash and negligent manner dashed against the motorcycle, in which, Kannan sustained injuries on his head and injuries all over the body. He was taken to Government Medical College Hospital and in spite of treatment, he died on the same day. The parents of the deceased filed MCOP.No.255/2016 on the file of the Motor Accidents Claims Tribunal/Chief Judicial Magistrate Court, Sivagangai, claiming compensation of Rs.20,00,000/-. The deceased Kannan married one Karthigaiselvi one year before the accident and after the death of Kannan, the said Karthigaiselvi married another person and living with children and therefore, the said Karthigaiselvi was not added as a party in the claim petition.



3.The appellant filed counter contending that the deceased while overtaking the bus belonging to the appellant, dashed against the bus and invited the accident. Therefore, the appellant is not liable to pay compensation to the respondents/claimants.

4.The Tribunal considering the oral and documentary evidence adduced on either side held that the driver of the bus belonging to the appellant transport corporation was responsible for the accident and accordingly awarded compensation of Rs.12,10,000/- with interest at 7.5% per annum. Aggrieved by the said award, the transport corporation has filed this appeal questioning negligence and quantum.

5.Perusal of the impugned judgment shows that father of the deceased examined himself as PW1 and PW2 is an eye-witness to the occurrence and Exs.P1 to P5 were marked by the claimants. The Conductor of the bus was examined as RW1 and no document was marked on the side of the appellant. PW2 has deposed that only due to the rash and negligent driving of the bus driver, accident had occurred. Whereas, RW1 deposed that only the deceased was responsible for the accident. According to him, when the deceased attempted to overtake the bus, he rashly and negligently hit the bus and caused the accident.

6.The records further shows that the father of the deceased filed a complaint and the same was registered against the driver of the bus in Cr.No.83/2007 under Section 304(A) IPC on the file of Thiruppachethi Police Station. However, the driver of the appellant corporation bus did not prefer any complaint against the deceased in the police station or to any other forum to prove his innocence that he was not the cause for the accident. The evidence of PW1, PW2 as to the manner of accident, is corroborated by Ex.P1-FIR, Ex.P4-MVI report and Ex.P5-final report. On the contra, the evidence of RW1 is not supported by any other independent witness nor documents. Further, the Conductor of the bus is not a direct witness to prove the manner of accident and the driver of the bus ought to have been examined by the appellant. However, the driver of the bus had kept silent from the date of accident till the date of giving his evidence before the Tribunal. Therefore, the Tribunal held that the driver of the bus was responsible for the accident and directed the appellant to pay compensation to the respondents/claimants. In my considered opinion, there is no infirmity in the said finding regarding negligence and hence, the same is confirmed.

7.As regards the quantum of compensation, in 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), under conventional heads, namely, loss of estate, loss of consortium and funeral expenses, Rs.15,000/-, Rs.40,000/- and Rs.15,000/- respectively are awarded. In this case, since the wife of the deceased after the accident got remarried with another person and living with children, the compensation for loss of consortium does not arise. Hence, a sum of



Rs.30,000/- is awarded under conventional heads. Therefore, the award of Rs.25,000/- towards funeral expenses stands deleted. Except the above, the award under other heads are confirmed. The compensation is modified and apportioned as hereunder:-

Loss of love and affection	=	Rs. 1,00,000/-
Loss of income	=	Rs.10,80,000/-
Loss of estate	=	Rs. 15,000/-
Transport charges	=	Rs. 5,000/-
Funeral expenses	=	Rs. 15,000/-

Total	=	Rs.12,15,000/-
(Less) Amount awarded by the Tribunal	=	Rs.12,10,000/-

Enhanced compensation	=	Rs. 5,000/-

8.The appellant is directed to deposit Rs.12,15,000/- with interest at 7.5% from the date of claim till the date of deposit, less the amount already deposited, if any, to the credit of the claim petition 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 the same in the ratio apportioned by the Tribunal, without filing any formal petition before the Tribunal.

In the result, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(T&P)

/True Copy/

Sub Assistant Registrar(CS-II)

To
The Chief Judicial Magistrate Court,
Motor Accidents Claims Tribunal, Sivagangai.

COPY TO:

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

+1cc to M/S.P.Prabhakaran, Advocate SR.No. 68595
+1cc to M/S.V.Sitharanjandas, Advocate SR.No. 68679

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