BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.07.2018

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD).No.461 of 2018
and
C.M.P.(MD).No.5523 of 2018

Tamil Nadu State Transport Corporation
Limited, rep. through its,
Managing Director,
having its Office at
Nagercoil. ... Appellant/Respondent

Vs.

1.R.Ramathilagam
2.R.Sabari Dharshini
3.R.Nikitha
4.Lakshmi ... Respondents/Petitioners

PRAYER:- Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award, dated 25.04.2017, passed in M.C.O.P.No.459 of 2013 by the Motor Accident Claims Tribunal / Special District Judge, Madurai.

For appellant : Mr.P.Prabhakaran

For respondents : Mr.A.Liaketali

JUDGMENT

Heard the learned counsel appearing for the appellant / Transport Corporation and the learned counsel appearing for the respondents / claimants.

2. It is a case of fatal. The manner of the accident is not in dispute. The Tribunal has awarded a sum of Rs.16,87,790/-, out of which the appellant Transport Corporation was directed to pay 60% of the amount ie., Rs.10,12,674/-. Aggrieved by the same, the appellant / Transport Corporation has filed this appeal questioning the liability as well as quantum.

3. The learned counsel appearing for the appellant / Transport Corporation would submit that though the Tribunal has come to the conclusion that the deceased was also responsible for the accident, without fixing equal liability, the Tribunal has erroneously fixed 60% liability on the driver of the Transport Corporation and 40%

liability on the deceased and therefore, he prayed to fix 50% liability on the driver of the Transport Corporation and 50% liability on the deceased. He would further submit that without any valid proof, the Tribunal has erroneously fixed the income of the deceased as Rs.9,000/- p.m. which is on the higher side and therefore, he prayed to reduce the amount awarded by the Tribunal under the head of loss of income by taking Rs.6,500/- as the notional monthly income of the deceased.

4. The learned counsel appearing for the respondents / claimants would submit that though the Tribunal has held in paragraph No.6 that it is the driver of the Transport Corporation bus, who caused the accident, by suddenly turning the bus from 8^{th} line to 10^{th} line at the Toll Gate under confusion, it has erroneously fixed 40% liability on the deceased and hence, the entire liability may be fixed on the driver of the Transport Corporation. He would further submit that though the deceased was earning a sum of Rs.12,000/- p.m. by working as Supervisor in a Petrol Bunk, the Tribunal has taken only a sum of Rs.9,000/- p.m. as the income of the deceased. Thus, he prayed not to interfere with the amount awarded by the Tribunal under the head of loss of income.

5. It is seen from the record that the Tribunal in paragraph No.6 has held that due to rash and negligent driving of the driver of the Transport Corporation bus has caused the accident. However, in paragraph No.7, the Tribunal has held that if the deceased would have been vigilant, little slow in speed and worn helmet, the accident could have been avoided. Except the driver of the Transport Corporation, no eyewitness has been examined on the side of the Transport Corporation to prove its version. On the side of the claimants, one eyewitness was examined as PW2, who had clearly deposed that the accident had occurred due to rash and negligent driving of the driver of the Transport Corporation. However, as rightly stated by the Tribunal, if the deceased would have been vigilant, little slow in speed and worn helmet, the accident could have been avoided or the damages could have been reduced. Thus, considering the above totality of the circumstances, this Court is inclined to fix 80% liability on the driver of the Transport Corporation and 20% liability on the deceased and accordingly, it is fixed.

6. So far as the income of the deceased is concerned, the claimants have not produced any valid document to prove that before the accident, he had earned either a sum of Rs.12,000/- or Rs.9,000/-. Therefore, this Court is inclined to fix Rs.6,500/- as the notional income of the deceased, as per the decision of the Hon'ble Supreme Court in **Syed Sadiq and others Vs. Divisional Manager, United India Insurance Company Limited**, reported in **2014 ACJ 627.** The deceased was aged about 42 years at the time of the accident. Therefore, as per the decision in **National Insurance Company Limited Vs. Pranay Sethi and others, reported in 2017(2) TN MAC 609 (SC)**, only 25% can be added as future prospects in the

monthly income of the deceased. If Rs.6,500/- is added with 25% of future prospects, the monthly income comes to Rs.8125/- (6500 + 1625 =8125). Considering the number of claimants, 1/4th amount is deducted towards personal expenses, the monthly income of the deceased comes to Rs.6094/- (8125 - 2031 = 6094) and annual income comes to Rs.73,128/-. If the annual income of Rs.73,128/- is multiplied with 14, which has been fixed by the Tribunal, as per the decision in **Sarla Verma and others Vs. Delhi Transport Corporation and another**, reported in **2009 (2) TN MAC 1 (SC) : 2009 (6) SCC 121**, the total loss of income comes to Rs.10,23,792/- (73128 x 14 = 10,23,792).

7. As per Pranay Sethi case, cited supra, instead of the award passed by the Tribunal under the heads of loss of estate, loss of consortium, loss of love and affection and funeral expenses, a sum of Rs.70,000/- is awarded on conventional head. If the transportation charges - Rs.10,000/- and medical expenses - Rs.42,590/- is added, the total compensation amount comes to Rs.11,46,382/- and the same is rounded off to Rs.11,46,400/-.

8. In view of the above, the award passed by the Tribunal is reduced from Rs.16,87,790/- to Rs.11,46,400/-, out of which, as stated earlier, the appellant / Transport Corporation is liable to pay 80% of the amount ie. Rs.9,17,120/- with 7.5% interest from the date of petition till the date of deposit, excluding the default period. The appellant / Transport Corporation is directed to deposit the entire award amount ie., Rs.9,17,120/-, less the amount already deposited, with accrued interest and costs, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit being made, the claimants are permitted to withdraw the amount now awarded with accrued interest and costs, as apportioned by the Tribunal, without filing any formal petition before the Tribunal. The appellant / Transport Corporation is also permitted to withdraw the excess amount, if any, already deposited before the Tribunal.

9. This Civil Miscellaneous Appeal is, accordingly, partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar(CS-IV)

TO

1. The Motor Accident Claims Tribunal,
   Special District Judge,
   Madurai.

2. The Record Keeper,
   V.R.Section,
   Madurai Bench of Madras High Court,
   Madurai.(2 copies)

+1 CC to Mr.P.PRABHAKARAN, Advocate in SR.No.71101
+1 CC to Mr.A.LIAKATALI, Advocate in SR.No.71044

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