

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.06.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.2211 of 2008

and

MP.No.1 of 2008

The Managing Director

Tamilnadu State Transport Corporation,
Coimbatore Division No.II,
Chennimalai Road,
Erode - 638 301.

.. Appellant /2nd Respondent

Vs.

1.Ayyammal

2. Karthikeyan

3. Nallasivam

4. Kanakaraj

..Respondents 1 to 4/Petitioners

5. K.M.Jayakumar

..5th Respondents/1st Respondent

(Fifth respondent given up before the Tribunal)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 29.03.2007 made in M.C.O.P.No.74 of 2004 on the file of the Motor Accidents Claims Tribunal and Sub Court, Bhavani, Erode District.

For Appellant : Mr.N.Anand

For R1, R2 & R4 : No appearance

J U D G M E N T

This appeal is preferred by the appellant Transport Corporation against the Judgment and Decree dated 29.03.2007 passed by the Motor Accident Claims Tribunal, Sub Court, Bhavani, Erode District (for brevity, "the Tribunal"), in M.C.O.P.No.74 of 2004.

2.The case in brief is as follows:

The respondents 1 to 4/claimants, who are the legal heirs of one Muniappan, filed a claim petition, seeking a sum of

Rs.5,00,000/- as compensation for the death of the aforesaid Muniappan in an accident that took place on 10.11.2003 on account of the carelessness and negligence on the part of the fifth respondent/driver of the town bus bearing Registration No.TN-33-N-0879 belonging to the appellant Transport Corporation. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.3,52,974/- with interest at the rate of 6% per annum from the date of petition. Challenging the same, the appellant Transport Corporation has filed the present Civil Miscellaneous Appeal.

3.The learned counsel for the appellant Transport Corporation has submitted that without considering the evidence of R.W.1/driver of the bus to the effect that the accident had occurred solely due to the carelessness and negligent act on the part of the deceased, who suddenly crossed the road, without following the traffic rules, the Tribunal has erred in fixing the negligence on the driver of the bus and accordingly fastening the liability on the appellant Transport Corporation. The learned counsel further submitted that the compensation awarded by the Tribunal is excessive and exorbitant.

4.Heard the learned counsel for the appellant and perused the materials available on record carefully and meticulously.

5.Despite the service of notice and the names of the respondents 1, 2 and 4 having been printed in the cause list, there is no representation on their behalf. However, considering the paucity of time, this Court is inclined to proceed with this appeal on merits.

6.As regards the finding of the Tribunal on negligence, it was contended on the side of the appellant Transport Corporation that the accident had occurred, due to the carelessness and negligent act on the part of the deceased (cyclist), who suddenly crossed the road, without observing the traffic rules and hence, the deceased himself invited the accident. To substantiate the same, they relied on the evidence of R.W.1/driver of the bus involved in the accident. However, the Tribunal has taken note of the contradiction in the testimony of R.W.1 to the effect that he drove the bus in a careful manner; and the deceased (cyclist) himself dashed against the bus; but he did not know as to how the deceased fell down and the discrepancies in Exs.P3-rough sketch and P4-observation mahazar documents and also considering the other documents adduced by the parties, has rightly concluded that the accident had occurred due to the rash and negligent driving of the driver of

the bus belonging to the appellant Transport Corporation, which this Court is not inclined to interfere.

7. With regard to the quantum of compensation, P.W.1/one of the sons of the deceased, has in his evidence, deposed that the deceased was aged about 57 years and earning a sum of Rs.6,000/- per month by self business. However, no proof was produced to substantiate the same. In the absence of any evidence, the Tribunal has fixed the monthly income of the deceased as Rs.3,000/- (Rs.100/- per day) and applying the unit method for deduction of personal expenses of the deceased and considering the age of the deceased, adopted the multiplier of 8 and determined the compensation under the head "loss of dependency" at Rs.2,06,400/-. The Tribunal has correctly analyzed the income of the deceased, adopted the correct multiplier and awarded the said sum towards the contribution of the deceased to the family and hence, the same is hereby confirmed.

7.1 That apart, the Tribunal has awarded Rs.5,000/- towards funeral expenses, Rs.30,000/- towards loss of consortium to the wife of the deceased, Rs.2,000/- towards transportation, Rs.30,000/- each towards loss of love and affection to the sons of the deceased, Rs.19,574/- towards medical expenses. The Tribunal has properly analysed the materials and evidence available on record and has awarded reasonable compensation on those heads and therefore, the same need not be interfered with by this Court.

8. In the result, this Civil Miscellaneous Appeal is dismissed. No costs. The appellant-Transport Corporation is directed to deposit the entire compensation amount, as awarded by the Tribunal, with interest and costs, 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 being made, the Tribunal shall transfer the respective shares of the award amount lying in the deposit to the savings bank accounts of the respondents/claimants as per the apportionment made by the Tribunal, through RTGS within a period of one week thereafter. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (Ad I)

//True Copy//

Sub Assistant Registrar

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To

1.The Subordinate Judge,
Motor Accident Claims Tribunal,
Sub Court, Bhavani, Erode District.

2.The Section Officer,
VR Section,
High Court,
Madras.

+lcc to Mr.N.Anand, Advocate SR.55081.

C.M.A.No.2211 of 2008
and
MP.No.1 of 2008

LN(CO)
CB(13/02/2020)



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