IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.06.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S. RAMATHILAGAM

C.M.A.No.2822 of 2015
and
M.P.No1 of 2015

The Managing Director,
Maha Nagara Transport Corporation,
Bengaluru. ... Appellant/Respondent

Vs.

1.Raju
2.Chandra
3.Vimala
4.Velmurugan
5.Vimal
6.Arul ... Respondents/Petitioner

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 20.02.2015 made in M.C.O.P.No.45 of 2013, on the file of Motor Accident Claims Tribunal, Sub-Court, Chidambaram.

For Appellant : Mr.T.Thiyagarajan

For R1 to R6 : Mr.A.Murughan

J U D G M E N T

The Criminal Miscellaneous Appeal has been preferred against the judgment and decree dated 20.02.2015 made in M.C.O.P.No.45 of 2013, on the file of Motor Accident Claims Tribunal, Sub-Court, Chidambaram.

2. The respondents herein, who are the claimants, have filed M.C.O.P.No.45 of 2013, on the file of the Motor Accident Claims Tribunal, Sub-Court, Chidambaram, claiming a sum of Rs.40,00,000/- as compensation for the death of one Vivek Kumar @ Vivek who died in a road accident that took place on 12.08.2012 at about 07.15 hrs. The claimants are father, mother, one sister and three brothers of the deceased.

3. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to the rash and negligent driving by the driver of the bus belonging to the appellant Transport Corporation and directed the appellant-Transport Corporation to pay the compensation of a sum of Rs.18,51,000/- to the claimants.

4. Before the Tribunal, on the side of the claimants, witnesses P.W.1 and P.W.2 were examined and following exhibits were marked:

(a) Ex.A1: Copy of FIR
(b) Ex.A2: Charge Sheet Copy
(c) Ex.A3: Post Mortem Certificate
(d) Ex.A4: Death Certificate
(e) Ex.A5: Driving License of Muralidharan
(f) Ex.A6: Medical bills
(g) Ex.A7: Driving license of the deceased
(h) Ex.A8: KA-53-6650 RC Book xerox
(i) Ex.A9: KA-03-HH-2481 RC Book xerox
(j) Ex.A10: KA-03-HH-2481 Insurance Policy xerox
(k) Ex.A11: KA-03-HL-5480 RC Book xerox
(l) Ex.A12: Visiting card
(m) Ex.A13: Corporation Bank pass book of the deceased
(n) Ex.A14: SBI Bank pass book of the deceased
(o) Ex.A15: Pancard
(p) Ex.A16: Motorcycle repair bill
(q) Ex.A17: P.W.2's driving license
(r) Ex.A18: Franchisee Application xerox of the deceased

On the side of the Respondent Transport Corporation, one Mr.Muralidaran was examined and no exhibits were marked.

5. Aggrieved by the award, the Transport Corporation has filed the present appeal.

6. The learned counsel for the appellant submitted that on 12.08.2012 at about 19:15 hrs while the deceased was driving his motorcycle bearing Registration No.KA-03-HH-2481 proceeding at Devanahalli-Pudukero Road, Bangalore in a very cautious manner and at that time the bus bearing Registration No. KA-01-FA-686 which came in the opposite direction driven in a rash and negligent manner at a greater speed dashed against the deceased motorcycle, due to which the deceased sustained severe grievous injuries in all over the body and inspite of best treatment given to him, he died on 13.08.2012 at 00.50hrs. The claimants who are the legal heirs of the deceased have claimed a sum of Rs.40,00,000/- as compensation for the medical expenses, loss of income, funeral expenses, loss of love and affection and other heads. The respondent Managing Director denied the mode of accident and also stated that the claimants claiming a sum of Rs.40,00,000/- is without any proof.

7.The Tribunal after analyzing the evidence and documents placed before the same has given a findings that the accident occurred due to rash and negligence on the part of the respondent/Transport Bus and fixed the liability and awarded a sum of Rs.18,51,000/- as compensation against the claim of Rs.40,00,000/- Aggrieved against the said award the Transport Corporation has preferred this appeal to set aside the award.

8.The Tribunal has also taken the income of the deceased at Rs.12,000/- per month and by applying multiplier 18 and deducting 1/3rd towards personal expenses has assessed the loss of income at Rs.17,28,000/-. The Tribunal has also awarded a sum of Rs.10,000/- as Transport Expenses and medical expenses at Rs.13,000/- and for loss of love and affection for each claimants at Rs.25,000/- and Rs.10,000/- each for claimants 3 to 6.

9.The appellant/Transport Corporation has contented that the accident occurred only due to the negligence on the part of the deceased and there is no negligent driving on the part of the driver of the said Transport Corporation. The evidence of P.W.1, P.W.2 and Ex.P1 were not properly considered by the Tribunal. The other grievances raised by the appellant regarding the liability that when the two vehicles were involved in the accident, the Tribunal ought to have dismissed the claim application in the absence of the non joinder of the necessary party viz., the Insurance Company of the said two wheeler when there is a negligence on the part of the Transport Corporation bus. In this argument of the appellant is that since the deceased is a bachelor and the Tribunal ought not to have deducted 1/3rd towards personal expenses. Further, in the absence of any proof of income and occupation, the Tribunal has taken income of the deceased at Rs.12,000/- which is highly excessive and it has to be reconsidered and the sum awarded under other heads are also excessive. On the whole, the award of the Tribunal is highly excessive and liable to be set aside.

10.Heard the learned counsel appearing for the appellant as well as the learned counsel for the respondents and perused all the materials available on record.

11.On hearing both sides, the contentions raised by the appellant is that in the absence of any definite proof of income, the monthly income fixed by the Tribunal is very exorbitant amount. Though it is stated by the claimants that the deceased was having proper and valid driving license for driving the van and he is the Managing Director of the said institution, no proof was filed by the respondents/claimants except the visiting card in the name GMS Domestic & International Courier &

Cargo (P) Ltd., issued by the employer of the organization. In the absence of relevant document irrespective of the income and occupation, the assessment of the monthly income by Tribunal at Rs.12,000/- is excessive. On the other hand, the respondents/claimants argued that when the deceased was 29 years old at the time of accident, the claimants viz parents are old aged and other claimants are very young and in these circumstances, the income of the deceased has to be properly considered and accordingly it has to be taken at Rs.15,000/-. On hearing both sides and on perusal of documents and evidence, this Court is inclined to modify the award, for when fixing Rs.10,000/- as monthly income and applying multiplier '17' would be reasonable one. Accordingly, the loss of income is calculated as follows.

{Rs.1,20,000/- (Rs.10,000x2) X 17 X 50/100 = Rs.10,20,000/-}

With regard to other grievance that the sum awarded by the Tribunal under the heads love and affection, transport expenses, medical expenses, personal expenses are also on the higher side. This Court is not inclined to modify the award passed under the said heads as they are reasonable and proper. Accordingly, this Court modifies the award passed by the Tribunal as follows:

S. No.	Description	Amount awarded by Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted
1.	Loss of income	Rs.17,28,000/-	Rs.10,20,000/-	Reduced
2.	Loss of Transport charges	Rs.10,000/-	Rs.10,000/-	Confirmed
3.	Funeral expenses	Rs.10,000/-	Rs.10,000/-	Confirmed
4.	Medical expenses	Rs.13,000/-	Rs.13,000/-	Confirmed
5.	Loss of love & affection (claimant's 1 & 2)	Rs.50,000/-	Rs.50,000/-	Confirmed
6.	Loss of love & affection (claimant's 3 to 4)	Rs.40,000/-	Rs.40,000/-	Confirmed
	Total	Rs.18,51,000/-	Rs.11,43,000/-	Reduced by Rs.7,08,000/-

12.In the result, the Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.18,51,000/- is hereby modified to a sum of Rs.11,43,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant-Transport Corporation is directed to deposit the modified award amount with interest and costs, less the amount already deposited, if any, within a period of twelve weeks from the date of receipt of a copy of this order. On such deposit, the respondents/claimants are permitted to withdraw the modified award amount along with interest and cost, less the amount if any, already withdrawn. The appellant-Transport Corporation is permitted to withdraw the excess amount lying in the deposit to the credit of M.C.O.P.No.45 of 2013, if the entire amount has already been deposited. No costs. Consequently, the connected Miscellaneous Petition is closed. The apportionment shall be as ordered by the Tribunal.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1. The Subordinate Judge,
Motor Accident Claims Tribunal,
Chidambaram, Cuddalore District.

+2cc to Mr.A.Murugan, Advocate sr.49277

C.M.A.No.2822 of 2015
and
M.P.No1 of 2015

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