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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.07.2019

CORAM:

THE HONOURABLE MRS. JUSTICE S.RAMATHILAGAM

C.M.A.No.202 of 2015

and

M.P.No.1 of 2015

The Managing Director,
Tamil Nadu State Transport
Corporation Limited,
Railway Station New Road,
Kumbakonam 612 001.

Appellant/Respondent

Vs

1.Gunasekaran
2.Tamilselvi
3.Munusamy
4.Venkat

Respondents/Claimants

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment passed in M.C.O.P.No.140 of 2011 dated 20.03.2014 on the file of the Motor Accident Claims Tribunal, IV Additional District Judge Court, Thiruvallur @ Ponneri.

For Appellant : Mr.D.Venkatachalam

For Respondents : No appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred against the decree and Judgment passed in M.C.O.P.No.140 of 2011 dated 20.03.2014 on the file of the learned Motor Accident Claims Tribunal, IV Additional District Judge Court, Thiruvallur @ Ponneri. The appeal has been preferred by the Tamil Nadu State Transport Corporation Limited aggrieved against the liability and award made by the Tribunal at Rs.5,88,000/- against the claim of Rs.12,00,000/-.

2. The brief facts leading to the claim petition is that on 26.11.2010, at about 02.45 p.m., when the deceased Mohana was travelling in a Tata sumo bearing Registration No. TN 07 S in



Panrutti to Kumbakonam road, vadakuthu, opposite to E.B.Office, at that time, the Respondent Transport Corporation bus bearing Registration No. TN 68 N 0097, driven by its driver in a rash and negligent manner, hit against the said Tata sumo. As a result of which, the deceased sustained grievous injuries and died on the spot.

3.The Transport Corporation in their counter statement denied the mode of the accident and the averments made by the respondents that the owner and insurer of the Tata sumo were not added as necessary parties. The other grievances raised by the appellant/Transport Corporation is that at the time of the accident, there was rain and the driver of the bus drove the bus in a slow and steady manner. The driver of the said tata sumo failed to notice the dampness in the road and lost the string control and dashed against the Transport Corporation bus. Apart from that, the sum claimed by the claimants as compensation under various heads are also denied as highly excessive.

4.The Tribunal after analysing the evidence and documents placed before the same, regarding the negligence and given a finding that the accident occurred only due to the rash and negligent driving on the part of the driver of the Transport Corporation bus, which is very much discussed by verifying the Motor Vehicle Inspector's Reports (Ex.P6 and Ex.P7) and fixed the negligence on the part of the driver of the Transport Corporation bus and fastened the liability on the appellant herein to the a compensation of Rs.5,88,000/-, under the following heads:

S.No	Head	Compensation (in.Rs.)
1.	Loss of estate	4,68,000.00
2.	Funeral expenses	10,000.00
3.	Loss of love and affection	1,00,000.00
4.	Transportation	10,000.00
Total		5,88,000.00

5.Aggrieved against the said award, the appellant/Transport Corporation has preferred this appeal questioning the quantum of compensation awarded by the Tribunal. In the ground of the appeal, the appellant/Transport Corporation has contended that mere registering First Information Report against the driver of the appellant is not sufficient to prove the negligence. The evidence of RW.1, who is driver of the bus was not considered by the Tribunal. Further grievances raised by the appellant is that the Tribunal ought not to have awarded a sum of Rs.1,00,000/- towards love and affection, which is on the



higher side. The other grievance raised by the appellant/Transport Corporation is that the respondents/claimants have independent income and hence, they cannot be considered as dependants to the deceased.

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6. While determining the compensation, the Tribunal has observed the deceased was aged about 45 years at the time of the accident, by verifying the Post Mortem Certificate (Ex.P3) and in the absence of any proof of income and occupation, the Tribunal has fixed the monthly income of the deceased at Rs.4,500/-. Her contribution towards her family would be Rs.3,000/- per month. Based on the evidence and document adduced the Tribunal has come to the conclusion that the rash and negligent driving of the driver of the said Transport Corporation caused the accident.

7. On perusal of the records, the claimants have not filed any documents to prove the income and occupation of the deceased. In the claim petition, the respondents/claimants contended that the deceased was a Panchayat President and earning a sum of Rs.20,000/- per month in the absence any documentary proof, the Tribunal has taken the monthly income at Rs.4,500/- is very much reasonable. It is also observed in the claim petition that the first claimant is the wife of the deceased and other three claimants are daughter and sons of the deceased. Though, it is very much contended by the appellant that the claimants are not depending upon the deceased and they are having independent income. The Tribunal ought to have awarded the huge sum as loss of income, when it is very much proved that the deceased was aged about 45 years at the time of the accident and the deceased left behind her husband and children, the loss caused by the death of the deceased cannot be measured by money since they have lost her support and care. Hence, the sum awarded by the Tribunal towards love and affection at Rs.1,00,000/- is very much reasonable. The sum awarded towards transportation is not on the higher side. The loss of income is very much determined by the Tribunal by taking contribution to her family at Rs.3,000/- is not on the higher side. The sum awarded by the Tribunal towards funeral expenses at Rs.10,000/- has to be properly modified as Rs.15,000/- towards funeral expenses.

8. As held by the Hon'ble Supreme Court in the decision rendered in the case of National Insurance Co. vs Pranay sethi and others reported in 2017 (2) TNMAC 601 (SC), the wife is entitled to a consortium, but the Tribunal has failed to award any amount towards consortium. Hence, this Court is inclined to award a sum of Rs.25,000/- towards consortium. Accordingly, this Court modifies the sum awarded by the Tribunal under various heads as follows:



unaltered. On such deposit being made, the Tribunal shall transfer the amount to the claimant's bank account through RTGS within a period of two weeks thereon.

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Sd/-
Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

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To

The IV Additional District Judge,
Motor Accidents Claims Tribunal,
Thiruvallur @ Ponneri.

C.M.A.No.202 of 2015
and
M.P.No.1 of 2015

TM(CO)
GMY(17/10/2019)