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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.02.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1078 of 2018

and

C.M.P.No.8986 of 2018

The Managing Director,
Tamilnadu State Transport Corporation
Coimbatore Limited,
No.137, Mettupalayam Main Road,
Coimbatore.

... Appellant/2nd Respondent

Vs.

1.Santhamani

.. Respondents 1 to 4/Petitioners

2.Minor.Arun

(Minor rep. by next friend/guardian
Mother the 1st petitioner Santhamani)

3.Bharath

4.Sundarammal

5.K.Kangarajan

...5th Respondent/1st Respondent

(R5 not necessary party in this proceedings
Hence given up)

Prayer:

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 16.03.2015 made in M.C.O.P.No.288 of 2014 on the file of Motor Accident Claims Tribunal, Sub Court, Gobichettipalayam.

For Appellant : Mr.V.Udayakumar

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Transport Corporation, challenging the award dated 16.03.2015 made in M.C.O.P.No.288 of 2014 on the file of Motor Accident Claims Tribunal, Sub Court, Gobichettipalayam.

2.The appellant/Transport Corporation is the 2nd respondent in M.C.O.P.No.288 of 2014 on the file of Motor Accident Claims



Tribunal, Sub Court, Gobichettipalayam. The respondents 1 to 4 filed the said claim petition, claiming a sum of Rs.12,00,000/- as compensation for the death of one Ganesan, who died in the accident that took place on 14.05.2014.

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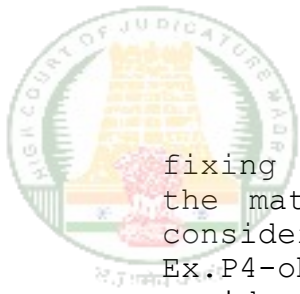
3.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the bus, the 5th respondent herein, belonging to the appellant/Transport Corporation and directed the appellant/Transport Corporation to pay a sum of Rs.7,51,970/- as compensation to the respondents 1 to 4.

4.Against the said award dated 16.03.2015 made in M.C.O.P.No.288 of 2014, granting compensation to the respondents 1 to 4, the appellant/Transport Corporation has come out with the present appeal.

5.The learned counsel appearing for the appellant contended that the Tribunal erred in accepting the evidence of P.W.2, who did not depose the nature of accident. The Tribunal failed to note that Ex.P1-FIR was registered against the deceased, while deciding the negligence. The Tribunal failed to consider the evidence of R.W.1, the driver of the bus. The respondents 1 to 4 failed to implead the owner or Insurance Company of the motorcycle. The respondents 1 to 4 have failed to produce any evidence with regard to age, avocation and income of the deceased. The total compensation awarded by the Tribunal is excessive and prayed for setting aside the award of the Tribunal.

6.Heard the learned counsel appearing for the appellant and perused the materials available on record.

7.From the materials on record it is seen that the respondents 1 to 4 have contended that accident has occurred due to rash and negligent driving by the 5th respondent, the driver of the bus. To prove the said contention, they have examined P.W.2, an eye witness who deposed that the accident occurred only due to rash and negligent driving by the 5th respondent, the driver of the bus. The appellant examined 5th respondent as R.W.1 and contended that FIR was registered against the deceased. The Tribunal has considered the fact that the deceased was seriously injured and hence, the 1st respondent who was a wife of the deceased could not lodge a complaint on the same day. It is the contention of the respondents 1 to 4 that the 5th respondent taking advantage of such situation has lodged false complaint against the deceased. The 1st respondent on the very next day lodged a complaint against the 5th respondent which was marked as Ex.P10. But, no action was taken on the said complaint. It is well settled that contents of FIR cannot be a sole criteria for



fixing negligence. The Tribunal has to independently consider the materials on record and fix the negligence. The Tribunal considering Ex.P3, the Motor Vehicle Inspector's Report and Ex.P4-observation magazar and Ex.P5, rough sketch, has held that accident occurred only due to rash and negligent driving by the driver of the bus as he went in the wrong side and caused accident. There is no error in the said finding of the Tribunal warranting interference by this Court.

8.As far as the quantum of compensation is concerned, the respondents 1 to 4 have contended that the deceased was an agriculturist and was earning a sum of Rs.1,00,000/- per annum and also was earning a sum of Rs.6,000/- per month by doing milk vending business. The respondents 1 to 4 failed to substantiate the said contention and the 1st respondent admitted that she is continuing agricultural work of her husband. The Tribunal in the absence of acceptable evidence, fixed notional income of the deceased at Rs.4,500/- per month and after deducting 1/3rd towards the personal expenses of the deceased and applying multiplier '15', awarded a sum of Rs.5,40,000/- under the head, loss of earning. The deceased was aged 47 years at the time of accident. The correct multiplier is '13'. The Tribunal erroneously applied multiplier '15'. The accident has occurred in the year 2014. The notional income of Rs.4,500/- fixed by the Tribunal is meagre. The Tribunal has not granted any enhancement towards future prospects. Four persons have filed claim petition, claiming compensation for the death. The Tribunal ought to have deducted 1/4th instead of 1/3rd. In view of the same, the multiplier applied by the Tribunal and a sum of Rs.1,00,000/- granted towards loss of love and affection and Rs.50,000/- granted towards loss of consortium are not interfered with. The total compensation awarded by the Tribunal under different heads are not excessive.

9.In the result, this Civil Miscellaneous Appeal is dismissed and sum of Rs.7,51,970/- awarded by the Tribunal as compensation to the respondents 1 to 4/claimants, together with interest and costs is confirmed. The appellant/Transport Corporation is directed to deposit the award amount together 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 judgment, to the credit of M.C.O.P.No.288 of 2014. On such deposit, the respondents 1, 3 & 4 are permitted to withdraw their share of the award amount, on the basis of apportionment fixed by the Tribunal, along with interest and costs, less the amount if any, already withdrawn. The share of the minor 2nd respondent is directed to be deposited in any one of the Nationalized Bank, till the minor 2nd respondent attains majority. On such deposit, the 1st respondent being the mother of



the minor 2nd respondent is permitted to withdraw the accrued interest, once in three months for the welfare of the minor. No costs. Consequently, connected Miscellaneous Petition is closed.

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Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

gsa

To

1. The Subordinate Judge,
Motor Accident Claims Tribunal,
Gobichettipalayam.
2. The Section Officer,
VR Section, High Court,
Madras.

+1cc to Mr.V.Udayakumar, Advocate, S.R.No.12488

C.M.A.No.1078 of 2018
and
C.M.P.No.8986 of 2018

NRL (CO)
CS/23/09/2019