IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.09.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.No.2372 of 2016
and
C.M.P.No.16502 of 2016

The Managing Director,
Tamil Nadu State Transport Corporation
Limited, Railway Station New Road,
Kumbakonam. .. Appellant/Respondent

Vs.

1.Raman
2.Pachaiyammal
3.Minor.Gomathi .. Respondents/Petitioners
(Minor petitioner represented by next
friend and natural guardian Raman)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 17.03.2016, made in M.C.O.P.No.40 of 2016, on the file of the Special Motor Accident Claims Tribunal, Thiruvannamalai.

For Appellant : Mr.D.Venkatachalam
For RR1 to 3 : Mr.B.Jawahar

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Transport Corporation, challenging the award dated 17.03.2016, made in M.C.O.P.No.40 of 2016, on the file of the Special Motor Accident Claims Tribunal, Thiruvannamalai.

2.The appellant/Transport Corporation is respondent in M.C.O.P.No.40 of 2016, on the file of the Special Motor Accident Claims Tribunal, Thiruvannamalai. The respondents filed the said claim petition, claiming a sum of Rs.10,00,000/- as compensation for the death of one Minor Veeravel, who died in the accident that took place on 02.09.2012. 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 belonging to the appellant/Transport Corporation and directed the appellant/Transport Corporation to pay a sum of

Rs.14,31,000/- as compensation to the respondents. Challenging the said award dated 17.03.2016, made in M.C.O.P.No.40 of 2016, granting compensation to the respondents, the appellant/Transport Corporation has come out with the present appeal.

3.The learned counsel appearing for the appellant contended that the accident occurred only due to the negligence on the part of the deceased who rode motorcycle in a rash and negligence manner and invited the accident and the same has also been proved by the appellant Corporation by examine the driver of the said bus as RW1. The Tribunal ought to have fixed contributory negligence against the deceased. Further the grounds raised by the appellant is that the monthly income fixed by the Tribunal at Rs.6,000/- is on the higher side. In the absence of any proof for the same. The Tribunal ought to have taken only Rs.15,000/- as notional income of the deceased. The Tribunal has also committed an error by deducting 1/3rd income of the deceased towards personal expenses, when the deceased was a bachelor. Hence the total sum under various heads granted by the Tribunal is excessive and prayed for setting aside the award of the Tribunal.

4.Heard Mr.D.Venkatachalam, learned counsel appearing for the appellant/Transport Corporation as well as Mr.B.Jawahar, learned counsel appearing for the respondents and perused the materials available on record.

5. On perusal of records, it is observed that the claimants have preferred the claim application claiming a sum of Rs.10,00,000/- as compensation for the death of their minor son Veeravel who was aged only 17 years at the time of accident. The claimants are parents and minor sister of the deceased. On 02.09.2012 at about 5.45 PM, the deceased while he was proceeding in his Hero Honda Splendor towards Thiruvannamalai to Tindivanam Road and at that time the bus belonging to the respondent driven in a rash and negligent manner which came in the opposite direction and hit against the two wheeler which was driven by the deceased and the deceased sustained severe injuries in the head and all over the body. He died on the spot. Thus, the claimants claimed a sum of Rs.10,00,000/- as compensation for the death of their son minor Veeravel.

6.From the materials available on record, it is seen that the deceased was a college student and he was only 17 years at the time of accident by verifying Ex.P4/postmortem certificate. The claimants are also parents and minor sister of the deceased. The documents filed on the side of the claimants to reveal the fact that the deceased was a college student at the time of accident and that was also not denied by the appellant herein.

The Tribunal has also relied upon various judgments for determining the income of the student and also considering the age of the student as 17 years at the time of accident. The Tribunal has taken monthly income of the deceased at Rs.6,000/-, when there is a clear evidence on the side of the claimants and there is no contrary evidence on the side of the respondent to disprove the fact the he was student at the time of accident. The future prospects of the claimants are monetary as well as great support to the claimants and the claimants have lost their love & affection, support, care which were all referred by the deceased. The monthly income taken by the Tribunal is not reasonable. Hence the monthly income of the Tribunal ought to have been modified to Rs.7,500/-. While considering the future prospects the Tribunal has taken 50% is on the higher side and this Court has taken 40% towards future prospects. The Tribunal applied multiplier '18' is correct. Though the deceased was a bachelor at the time of accident. The Tribunal has deducted 1/3rd towards personal expenses is not proper and this Court deducted 1/2 towards personal expenses. Hence the loss of dependency is modified to Rs.11,34,000/- [(Rs.7,500/- + 3,000 (Rs.7,500/- of 40%) x 12 x 18 x 1/2)]. The sum awarded by the Tribunal towards funeral expenses is meager and the same is enhanced to Rs.15,000/-. The Tribunal has not awarded any sum towards loss of estate and transportation and this Court grants a sum of Rs.15,000/- and Rs.10,000/- respectively under those heads. The sum awarded by the Tribunal towards loss of love and affection is proper and reasonable and does not require any modification. Thus the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)
1.	Loss of dependency	Rs.12,96,000/-	Rs.11,34,000/-
2.	Loss of love and affection to the claimants 1 & 2	Rs.1,00,000/-	Rs.1,00,000/-
3.	Loss of love and affection to the 3rd claimant	Rs.25,000/-	Rs.25,000/-
4.	Funeral expenses	Rs.10,000/-	Rs.15,000/-
5.	Loss of estate	-	Rs.15,000/-
6.	Transportation charges	-	Rs.10,000/-

	Total	Rs.14,31,000/-	Rs.12,99,000/-

7.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.14,31,000/- is reduced to Rs.12,99,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. No Costs. Consequently connected Miscellaneous Petition is closed.

8.The appellant/Transport Corporation is directed to deposit the modified award amount now determined by this Court along with interest and costs, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the respondents 1 & 2/Claimants 1 & 2 are permitted to withdraw their respective share from the modified award amount on the basis of apportionment fixed by the Tribunal along with proportionate interest and costs, less the amount if any, already withdrawn. The share of the minor 3rd respondent is directed to be deposited in any one of the Nationalised Bank till she attains majority. The 1st respondent being the father of the 3rd respondent is permitted to withdraw the accrued interest once in three months for the welfare of the minor. The appellant/Transport Corporation is permitted to withdraw the excess amount, if any lying in the deposit to the credit of M.C.O.P.No.40 of 2016, if the entire award amount has already been deposited by them.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

mtl
To
1.The Special Motor Accident Claims Tribunal,
Thiruvannamalai.

2.The Section Officer,
VR Section,
High Court,
Madras.
+1 CC to Mr.D.Venkatachalam, Advocate sr 78595

C.M.A.No.2372 of 2016
and
C.M.P.No.16502 of 2016

CP(CO)
SP(24/07/2020)