

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.07.2019

CORAM:

THE HONOURABLE MRS. JUSTICE S.RAMATHILAGAM

C.M.A.No.2095 of 2018

and

C.M.P.No.16237 of 2018

The Managing Director

Tamil Nadu State Transport Corporation

Kumbakonam Division,

Kumbakonam.

Appellant/Respondent

Vs

1.Suseela

2.Kalaiselvi

3.Rajasekaran

Respondents/Petitioners

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.157 of 2016 dated 12.03.2018 on the file of the Motor Accident Claims Tribunal, II Additional District Sessions Judge, Chidambaram.

For Appellant : Mr.D.Venkatachalam

For Respondents : Mr.T.Gobinath

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred against the judgment and decree made in M.C.O.P.No.157 of 2016 dated 12.03.2018, on the file of the Motor Accident Claims Tribunal, II Additional District Sessions Judge, Chidambaram. The appellant herein is the Transport Corporation aggrieved against the award and liability fixed by the Tribunal.

2. The brief facts leading to the claim petition is that on 19.08.2016, at about 07.50 a.m., when the deceased was riding his two wheeler TVS XL bearing Registration No. TN 51 M 0475 on Thirupungur - Vaitheshwaran kovil main road, from west to east direction, at that time, a bus bearing Registration No. TN 49 N 1765, which came in the same direction, hit the deceased on the back side of the said two wheeler. As a result of which, the

deceased sustained severe head injuries and died on the way to the hospital and a Criminal case was also registered. Hence, the legal representatives of the deceased, viz., wife, daughter and son of the deceased, made a claim for a sum of Rs.25,00,000/- as compensation.

3. The Transport Corporation contested the claim by filing a counter statement, inter alia stating that they are not liable to pay the compensation and the driver of the bus drove the vehicle with due care and caution observing the traffic rules. The compensation claimed by the claimants was also denied as excessive.

4.The Tribunal observed the contentions raised by both side by way of evidence and documents and has 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 and awarded a sum of Rs.10,09,000/- as compensation under the following heads:

Future loss of income	Rs.8,40,000/-
Love and affection	Rs.99,000/-
Transportation	Rs.15,000/-
Funeral expenses	Rs.15,000/-
Loss of consortium	Rs.40,000/-
Total	Rs.10,09,000/-

5.Aggrrieved against the said award the Insurance Company has preferred this appeal to set aside the same.

6.In the grounds of appeal, it is contended by the appellant/ Insurance Company that the Tribunal has failed to consider the evidence of RW.1 who was the driver of the bus, inspite of the fact that when the driver was stopped the bus at a bus stop, the deceased over took the bus from left side instead of right side and hand of the student who was travelled on the foot board of the bus touched the said two wheeler, as a result of which, the deceased lost his balance, fell down and caused the accident. He further contended that the income of the deceased was fixed by the Tribunal is on the higher side. The sum awarded under the head of love and affection is also not properly considered.

7.Hearad, Mr.D.Venkatachalam, learned counsel for the appellant/ Transport Corporation and Mr.T.Gobinath, learned counsel appearing for the respondents.

8. On hearing both sides and on perusing the available records, it is seen that when the deceased was travelling in the said two wheeler on 19.08.2016, a bus came behind the said two wheeler in a rash and negligent manner and a student who travelled on the foot board of the bus touched the said two wheeler, as a result of which, the deceased lost his balance, fell down and caused the accident. Hence, the appellant is very much aggrieved by stating that the negligence aspect was on the part of the driver of the bus who permitted more number of passengers to travel in the foot board, which resulted the said accident. Hence, the liability fixed by the Tribunal is very much aggrieved by the Transport corporation. It is seen from records that the Tribunal has taken into consideration the evidence of PW2, eyewitness who deposed before the Tribunal that the place of occurrence is not at the bus stop and the bus was proceeding behind the two wheeler and the student travelled in the said bus was in the foot board, hit the two wheeler, hence the deceased fell down on the road. Further, Ex.P1/ First Information Report filed only against the driver of the bus, which is very much observed by the Tribunal. Hence, the observations made by the Tribunal by fixing the negligence on the part of the driver is very much reasonable.

9. While perusing the sum awarded by the Tribunal, it is seen that the Tribunal has taken the age of the deceased as 60 years at the time of the accident and the said fact was also very much discussed in the Post Mortem Certificate (Ex.P2). Though the claimants have stated that the deceased was working as Boiler Operator in Bisme Fisheries Private Limited, Thoduvai and was earning a sum of Rs.15,000/- per month. To prove the fact that the deceased was working in the said fisheries, the relevant document which was issued on the side of the claimants as Ex.P11, and education qualifications were also marked as Ex.P7 to Ex.P9 and the evidence placed in favour of the deceased, Ex.P14 and Ex.P15, the Tribunal has taken the monthly income of the deceased at Rs.15,000/- based on the evidence and the above said documents. By deducting 1/3rd towards the personal expenses of the deceased and applied proper multiplier for age group of 60, the future loss of income has been arrived at Rs.8,40,000/-. The Tribunal has awarded a sum of Rs.99,000/- towards love and affection to the second and third claimants and sum of Rs.40,000/- towards consortium to the first claimant are very much reasonable and proper. The other aspects such as transportation and funeral expenses were also properly considered by the Tribunal. Since this Court finds no error in the award passed by the Tribunal, the same is confirmed.

10. In the result, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petitions is closed.

11.The appellant/ Transport Corporation is directed to deposit the award amount as ordered by the Tribunal with interest, after deducting the amount if any already deposited, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the claimants are at liberty to withdraw the entire amount as per the apportionment made by the Tribunal and the Tribunal is directed to transfer the deposited amount to the Savings Bank Account of the claimant, forthwith, through RTGS.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

vkr

To

1.The Motor Accidents Claims Tribunal,
II Additional District and Sessions Judge,
Chidambaram.

2. The Section Officer,
V.R. Section, High Court,
Madras.

+1cc to Mr.D.Venkatachalam, Advocate, S.R.No. 64653

+1cc to Mr.T.Gopinath, Advocate, S.R.No. 65187

C.M.A.No.2095 of 2018
and

C.M.P.No.16237 of 2018

RJI (CO)
GN(09/10/2019)

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