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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.06.2019

CORAM:

THE HONOURABLE MRS. JUSTICE S.RAMATHILAGAM

C.M.A.No.2322 of 2019
and CMP.No.10438 of 2019

The Managing Director,
Metropolitan Transport Corporation Limited,
Pallavan Salai,
Chennai 600 002.

Appellant/Respondent

Vs

D.Amutha

Respondent/Petitioner

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the fair and decreetal order dated 18.12.2017, passed in M.C.O.P.No. 4740 of 2013, on the file of the learned Principal Special Judge, Special Court under E.C. & NDPS Act, Motor Accident Claims Tribunal, Chennai.

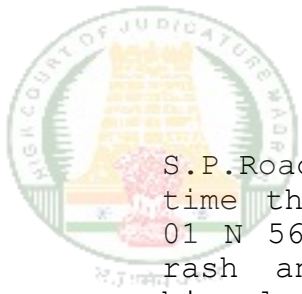
For Appellant : Dr.S.S.Swaminathan

For Respondent : Mr.K.V.Dhanapalan for
M/s.T.Fenn Walter Associates

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.4740 of 2013 dated 18.12.2017, on the file of the learned Principal Special Judge, Special Court under E.C. & NDPS Act, Motor Accident Claims Tribunal, Chennai. The Managing Director, Transport Corporation is the appellant herein, who has aggrieved against the award passed by the Tribunal made in the said claim application by stating that the award is highly excessive, exorbitant and without any basis.

2. The brief case leading to the claim petition is that on 07.11.2011, at about 01.45 p.m., when the deceased was proceeding in his bicycle from west to east direction in a careful manner by observing all traffic rules and regulations in



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S.P.Road at Gandhimandapam opposite to Adayar, Chennai, at that time the Transport Corporation Bus bearing Registration No. TN 01 N 5646, which came behind the deceased at a high speed in a rash and negligent manner, hit the deceased and two other bicycles, which were waiting for the traffic signal, caused grievous injuries and the deceased sustained grievous injuries and he died. The claimant is the legal representative of the deceased and claimed a sum of Rs.25,00,000/- as compensation. The deceased was 40 years old at the time of the accident and he was earned monthly income of Rs.9,000/- by working in Front Office Executive. The respondent/ Transport Corporation denied the mode of the accident and also the claim made by the claimant by stating that the claim is highly excessive and also denied the total negligence on the part of the driver of the bus, by stating that the another vehicle was also involved in the said accident.

3.The Tribunal after analysing the evidence and documents placed before the same, has come to the conclusion that the accident occurred only due to the negligence on the part of the driver of the bus and awarded a sum of Rs.14,65,800/- as compensation to the claimant and by considering the age, income and other relevant aspects.

4.Aggrieved against the said award, the Transport Corporation has preferred this appeal. In the ground of appeal, the appellant/ Transport Corporation contended that there is no negligence on the part of the driver of the bus as stated by the claimant. The bus would not have proceeded as narrated by the claimant. Further, they came to know about the accident, by way of a notice issued in Crime No.410/AM3/2011 under Sections 179 and 304 of IPC., on 08.11.2011, by the Adayar Police Investigation Inspector. Hence, the liability of the Transport Corporation and the negligence on the part of the driver of the bus is very much disputed by the appellant herein in the appeal. Apart from the liability, the sum awarded by the Tribunal under various heads are also denied as excessive.

5. Heard, Dr.S.S.Swaminathan, learned counsel appearing for the appellant/ Transport Corporation and Mr.k.V.Dhanapalan, learned counsel appearing for the respondent/claimant.

6. On perusal of the records, evidences with regard to the involvement of the vehicle in the accident, RW.1 was examined before the Tribunal. He has clearly stated the fact that paint scratch mark is found in the bumper of the bus. Apart from that, PW.3 is the eyewitness, through him, Exs.P.8 to P.13 were marked. Ex.P.7 is the Motor Vehicle Inspection report of the vehicle and Ex.P.4 is the plan copy. Apart from this, RW.1's evidence clearly shows that there was a scratch mark in the



bumper of the bus and the said factum is very much sufficient for the Tribunal to fix the negligence on the part of the driver of the bus.

7.Regarding the quantum, it is vehemently argued by the appellant/ Transport Corporation that in the absence of the examination of the employer of the deceased, only based on the Ex.P.5 / salary certificate, the Tribunal has taken the monthly salary of the deceased at Rs.9,000/- and calculated a sum of Rs.13,60,800/- towards loss of dependency.

8.On the other hand, the respondent/claimant would contend that the salary certificate was produced before the Tribunal and further bank details and application for EPF were also placed before the Tribunal. Hence, the Tribunal has properly assessed the loss of dependency by taking the income of the deceased at Rs.9,000/- and adding future prospects of 40% by adopting multiplier method is also very much and reasonable. In view of the documents viz., Ex.P5 /Salary report and Ex.P.10/ Bank details, this Court finds it reasonable and proper in determining the loss of dependency, hence the sum awarded by the Tribunal at Rs.13,60,800/- is confirmed.

9.The other grievance raised by the appellant is that regarding the sum awarded for loss of love and affection at Rs.75,000/-, which is very much on the higher side, this Court modifies the said amount to Rs.40,000/- and the sum awarded by the Tribunal under the head of funeral expenses, pain and sufferings, mental agony are found very much proper and reasonable, hence, this Court is not inclined to make any modification under the said heads. Further, this Court is awarded a sum of Rs.25,000/- towards loss of estate. In view of the above discussion, the award is modified as follows:

S.No	Head	Compensation (in.Rs.)
1.	Loss of dependency	13,60,800.00
2.	Loss of love and affection	40,000.00
3.	Funeral expenses	15,000.00
4.	Pain and sufferings	5,000.00
5.	Mental agony	10,000.00
6.	Loss of estate	25,000.00
Total		14,55,800.00

Thus, the respondent/claimant is entitled to a sum of



Rs.14,55,800/- together with interest at the rate of 7.5% per annum from the date of claim till the date of deposit.

10. In the result,

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(i)The Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

(ii)The compensation awarded by the Tribunal is reduced from Rs.14,65,800/- to Rs.14,55,800/-, shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

(iii)The appellant/ Transport Corporation is directed to deposit the entire amount, awarded by this Court along with interest and costs before the Tribunal, within a period of four weeks from the date of receipt of a copy of this order, after deducting the amount already deposited, if any. The interest awarded by the Tribunal at the rate of 7.5% per annum is 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.

Sd/-

Assistant Registrar(CS-V)

//True copy//

Sub Assistant Registrar

vkr

To

1. The Motor Accidents Claims Tribunal,
The Principal Special Judge,
Chennai.

2. The Section Officer,
VR Section, High Court, Madras

+1cc to M/s.T.Fenn Walter Associates, Advocate SR.No.47076

+1cc to Mr.S.S.Swaminathan, Advocate SR.No.47028

C.M.A.No.2322 of 2019
and CMP.No.10438 of 2019

NMI (CO)
GMY (06/08/2019)