

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.04.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2130 of 2019

and

C.M.P.No.8558 of 2019

The Managing Director,
KSRTC, Ramanagara Division,
Archakarahalli, Bengaluru. .. Appellant

Vs.

1.Vadivambigai
2.Minor.Vasunthara
3.Minor.Nishal .. Respondents

(minor respondents 2 and 3 are represented by their
NF/Guardian Mother first respondent, Vadivambigai)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 10.10.2018 made in M.C.O.P.No.224 of 2018 on the file of the Motor Accidents Claims Tribunal, Special Sub Court, Tiruvannamalai.

For Appellant : Mr.T.Thiyagarajan

J U D G M E N T

The Civil Miscellaneous Appeal is filed against the award dated 10.10.2018 made in M.C.O.P.No.224 of 2018 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Tiruvannamalai.

2.The appellant is the respondent in M.C.O.P.No.224 of 2018 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Tiruvannamalai. The respondents filed the above said claim petition claiming a sum of Rs.80,00,000/- as compensation for the death of one Ramesh, who died in the accident that took place on 28.12.2017.

3.The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred only 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.21,55,000/- as compensation to the respondents.

4. Against the said award dated 10.10.2018 made in M.C.O.P.No.224 of 2018, the appellant-Transport Corporation has come out with the present appeal.

5. The learned counsel appearing for the appellant-Transport Corporation contended that the Tribunal failed to see that accident has occurred due to rash and negligent riding by the deceased. The driver of the bus was cautiously driving the bus and accident did not occur due to his negligence. The Tribunal erred in fixing the negligence on the part of the driver of the bus based on F.I.R. and charge sheet and driver of the bus went to Bangalore by different route. The Tribunal failed to see that no rough sketch was filed before the Tribunal. The Tribunal erred in accepting the evidence of P.W.2, alleged eye-witness and failed to see that respondents did not prove that P.W.2 was present in the place of occurrence at the time of accident and on erroneous ground, the Tribunal rejected the evidence of R.W.1. In any event, the Tribunal ought to have fixed contributory negligence on the part of the deceased. The Tribunal without any documents and acceptable evidence let in by the respondents, fixed monthly income of the deceased at Rs.13,500/-, which is excessive. The amounts awarded by the Tribunal towards loss of love and affection and damage to motorcycle is excessive and prayed for setting aside the award passed by the Tribunal.

6. I have heard the learned counsel appearing for the appellant and perused the entire materials on record.

7. From the materials available on record it is seen that the respondents contended that the driver of the bus belonging to the appellant-Transport Corporation drove the same in a rash and negligent manner and dashed against the motorcycle in which the deceased was traveling and deceased sustained fatal injuries. According to the respondents, the driver of the bus did not stop the vehicle and fled away from the scene of occurrence. This contention was not denied by the appellant or R.W.1, the driver of the bus. Further the driver of the bus has admitted that he did not return to Bangalore via regular route but went to Bangalore in a different route. F.I.R. was registered against R.W.1 and charge sheet was also laid against R.W.1. The respondents examined P.W.2, eye-witness who deposed about the negligence on the part of the driver of the bus. The appellant has not examined any independent witness to substantiate their case that accident did not occur due to the negligence on the part of the driver of the bus belonging to the appellant-

Transport Corporation. The Tribunal considering all the above materials, fixed negligence on the part of the driver of the bus belonging to the appellant-Transport Corporation. There is no error in the said finding of the Tribunal warranting interference by this Court.

8.As far as quantum of compensation is concerned, according to the respondents, the deceased was working in Tamil Nadu Livestock Development Agency & Animal Husbandry Department and was earning a sum of Rs.50,000/- per month. To substantiate the same, they examined the Deputy Director of the Tamil Nadu Livestock Development Agency & Animal Husbandry Department as P.W.3 and marked Ex.P7/certificate issued by the Tamil Nadu Livestock Development Agency & Animal Husbandry Department. They have not filed any document to prove that the deceased was earning a sum of Rs.50,000/- per month. In view of the same, the Tribunal considering the evidence of P.W.3 and Ex.P7, fixed monthly income of the deceased at Rs.13,500/-. The accident occurred in the year 2017 and the monthly income fixed by the Tribunal is not excessive. The deceased was in a permanent job and as per the judgment of the Hon'ble Apex Court reported in 2017(2)TNMAC 609 (SC) [National Ins. Co. v. Pranay Sethi], the respondents are entitled to get 30% enhancement towards future prospects. But the Tribunal has granted only 25% enhancement towards future prospects. In view of the same, the amounts awarded by the Tribunal under other heads are not interfered with. The contention of the learned counsel for the appellant that the Tribunal has awarded excessive amount towards loss of love and affection is not accepted. The respondents 2 and 3 are minors aged 12 and 9 years respectively at the time of death of their father. The minor children have lost love and affection of their father at a very young age. Hence, a sum of Rs.75,000/- each granted by the Tribunal towards loss of love and affection to the minor respondents 2 and 3 is not excessive and there is no error in the said award of the Tribunal warranting interference by this Court.

9.In the result, this Civil Miscellaneous Appeal is dismissed and the award passed by the Tribunal as compensation to the respondents is confirmed. The appellant-Transport Corporation is directed to deposit the amount awarded by the Tribunal 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.224 of 2018 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Tiruvannamalai. On such deposit, the first respondent is permitted to withdraw her share of the award amount, as per the ratio of apportionment fixed by the Tribunal, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary

applications before the Tribunal. The share of the minor respondents 2 and 3 is directed to be deposited in any one of the Nationalized Banks, till the minor respondents 2 and 3 attain majority. On such deposit, the first respondent, being the mother of the minor respondents 2 and 3 is permitted to withdraw the accrued interest once in three months for the welfare of the minor respondents 2 and 3. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

krk

To

1. The Special Subordinate Judge,
Motor Accidents Claims Tribunal,
Tiruvannamalai.
2. The Section Officer,
VR Section,
High Court,
Madras.

C.M.A.No.2130 of 2019 and
C.M.P.No.8558 of 2019

PP(CO)
SSM(18/10/2019)



WEB COPY