



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.04.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2186 of 2019
and C.M.P.No.9076 of 2019

The Managing Director
Tamil Nadu State Transport Corporation Ltd.,
Villupuram Division No.III
Kanchipuram. .. Appellant/Respondent

Vs.

1.G.Triveni

2.Minor K.Abhishek

3.Minor K.Aakash

(Minors/respondents 2 and 3 rep. by their
mother and natural guardian 1st respondent)

4.K.K.Jayapal

5.R.K.Lakshmi

.. Respondents/Petitioners

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 23.12.2016 made in M.C.O.P.No.66 of 2013 on the file of the Motor Accidents Claims Tribunal, District Court No.II, Kanchipuram.

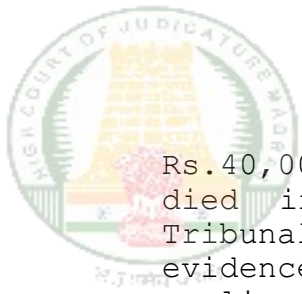
For Appellant : Mr.K.J.Sivakumar

For RR1,4&5 : Mr.M.Kamalahasan for
Mr.K.G.Senthilkumar

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award dated 23.12.2016 made in M.C.O.P.No.66 of 2013 on the file of the Motor Accidents Claims Tribunal, District Court No.II, Kanchipuram.

2.The appellant/Transport Corporation is respondent in M.C.O.P.No.66 of 2013 on the file of the Motor Accidents Claims Tribunal, District Court No.II, Kanchipuram. The respondents 1 to 5 filed the above claim petition claiming a sum of



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Rs.40,00,000/- as compensation for the death of one Kishore, who died in the accident that took place on 11.01.2012. 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.18,39,904/- as compensation to the respondents 1 to 5. Against the said award dated 23.12.2016 made in M.C.O.P.No.66 of 2013, granting compensation to the respondents 1 to 5, the appellant/Transport Corporation has come out with the present appeal.

3.The learned counsel appearing for the appellant/Transport Corporation contended that the Tribunal erred in fixing negligence on the part of the driver of the bus belonging to the appellant/Transport Corporation merely based on the F.I.R. and evidence of P.W.1. P.W.1 is not an eye witness. The respondents have not filed any document to prove the age, avocation and income of the deceased. In the absence of material evidence, the Tribunal erroneously fixed the age of the deceased as 35, income of the deceased at Rs.7,500/- per month and granted 50% enhancement towards future prospects, which are excessive. The amounts granted by the Tribunal towards loss of consortium, loss of love and affection and funeral expenses are excessive and prayed for setting aside the award of the Tribunal.

4.Per contra, the learned counsel appearing for the respondents 1 to 5/claimants contended that the respondents have examined P.W.2/eye witness, who deposed that the accident has occurred only due to rash and negligent driving by the driver of the bus belonging to the appellant/Transport Corporation. The appellant has not let in any evidence to disprove the evidence of P.W.2/eye witness. The deceased was running own shop in the name and style of Abhi Electronics at Nellikuppam and was earning a sum of Rs.30,000/- per month. The amounts granted by the Tribunal under different heads are not excessive and prayed for dismissal of the appeal.

5.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the respondents 1 to 5 and perused the materials available on record.

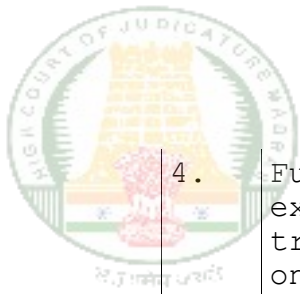
6.From the materials available on record, it is seen that the respondents have contended that while the deceased was riding his motorcycle, the driver of the bus belonging to the appellant drove the bus in a rash and negligent manner and hit against the motorcycle driven by the deceased. Due to the injuries sustained by the deceased in the accident, he died. F.I.R. was registered against the driver of the bus. To prove the said contention, the respondents have examined P.W.2/eye witness, who deposed that the accident has occurred due to rash and negligent driving by the driver of the bus. The appellant



has not examined the driver of the bus or any witness to disprove the evidence of P.W.2 and to prove that the accident occurred only due to rash and negligent riding by the deceased. The Tribunal considering the above materials on record, held that the accident has occurred only due to rash and negligent driving by the driver of the bus belonging to the appellant/Transport Corporation by giving cogent and valid reason. There is no error in the said finding of the Tribunal warranting interference by this Court.

7.As far as quantum of compensation is concerned, the respondents 1 to 5 have contended that the deceased was running own shop in the name and style of Abhi Electronics at Nellikuppam and was earning a sum of Rs.30,000/- per month. The respondents have failed to substantiate the said contention. In the absence of any material evidence, the Tribunal has fixed monthly income of the deceased at Rs.7,500/- and granted 50% enhancement towards future prospects. The deceased was aged 35 years at the time of accident as per post-mortem certificate. As per the judgment of the Hon'ble Apex Court, the respondents are entitled to only 40% enhancement towards future prospects. The amount granted by the Tribunal towards loss of dependency is modified to Rs.15,12,000/- (Rs.7,500/- + 3000 (Rs.7,500/- X 40%) X 12 X 16 X 3/4). In addition to that the Tribunal has awarded a sum of Rs.20,000/- altogether towards funeral expenses and transportation. The said amount is confirmed as a sum of Rs.15,000/- towards funeral expenses and Rs.5,000/- towards transportation. A sum of Rs.50,000/- granted by the Tribunal towards loss of consortium is excessive and the same is reduced to Rs.40,000/-. Further, the Tribunal has awarded a sum of Rs.1,50,000/- towards loss of love and affection to the respondents 2 to 5, which is excessive. This Court reduces the same to Rs.20,000/- each towards loss of love and affection to the respondents 2 & 3 and Rs.10,000/- each towards loss of love and affection to the respondents 4 & 5. The Tribunal has not awarded any amount towards loss of estate. A sum of Rs.15,000/- is granted towards loss of estate. 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)	Award confirmed or enhanced or granted
1.	Loss of dependency	16,19,904	15,12,000	Reduced
2.	Loss of love and affection	1,50,000	60,000	Reduced
3.	Loss of Consortium	50,000	40,000	Reduced



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4.	Funeral expenses and transportation	20,000	15,000 5000	Confirmed
5.	Loss of estate	-	15,000	Granted
	Total	18,39,904	16,47,000	Reduced by Rs.1,92,904/-

8. With the above modification, the Civil Miscellaneous Appeal is partly allowed. The compensation of Rs.18,39,904/- awarded by the Tribunal is hereby reduced to Rs.16,47,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The first respondent being wife of the deceased is entitled to a sum of Rs.5,01,320/-, the respondents 2 and 3 being sons of the deceased are entitled to a sum of Rs.4,61,420/- each and the respondents 4 and 5 being parents of the deceased are entitled to a sum of Rs.1,11,420/- each as compensation. 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 by them, if any, within a period of 16 weeks from the date of receipt of a copy of this judgment. On such deposit, the respondents 1, 4 and 5/claimants 1, 4 and 5 are permitted to withdraw their respective share of the modified award amount along with proportionate interest and costs, after adjusting the amount if any, already withdrawn. The respective share amounts of the minors/respondents 2 and 3 are directed to be deposited in any one of the Nationalised Bank till the minors attain majority. The mother of the minors/1st respondent is permitted to withdraw the accrued interest once in three months for the welfare of the minors. The appellant/Transport Corporation is permitted to withdraw the excess amount lying in the deposit to the credit of M.C.O.P.No.66 of 2013, if the entire award amount has already been deposited by them. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-V)

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Sub Assistant Registrar

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To

1.The II Judge, District Court
(Motor Accident Claims Tribunal),
Kanchipuram.

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

+1cc to Mr.K.J.Sivakumar, Advocate SR.No.39848

+1cc to Mr.K.G.Senthilkumar, Advocate SR.No.38666

C.M.A.No.2186 of 2019
and C.M.P.No.9076 of 2019

CNR(CO)
GMY(05/09/2019)