

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.08.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3056 of 2019

and

C.M.P.No.16720 of 2019

The Managing Director
Tamil Nadu State Transport Corporation Ltd.,
Railway Station New Road,
Kumbakonam - 612 001. Appellant

Vs.

1.S.Sundari

2.Minor Manojraj

3.Minor Dhinesh

4.M.Krishnamoorthy

5.Alamelu

(Minor petitioners rep by mother, guardian,
NF S.Sundari, 1st petitioner herein) Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 26.02.2019 made in M.C.O.P.No.2173 of 2017 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Cuddalore.

For Appellant : Mr.D.Venkatachalam

WEB COPY
J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Transport Corporation, challenging the award dated 26.02.2019 made in M.C.O.P.No.2173 of 2017 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Cuddalore.

2.The appellant/Transport Corporation is respondent in M.C.O.P.No.2173 of 2017 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Cuddalore. The respondents filed the said claim petition, claiming a sum of Rs.20,00,000/- as compensation for the death of one Sankar, who died in the accident that took place on 27.12.2016. 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.10,93,750/- as compensation to the respondents. Challenging the said award dated 26.02.2019 made in M.C.O.P.No.2173 of 2017, granting compensation to the respondents, 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 ought not to have fixed the negligence of the driver of the bus based on the evidence of PW1 who is the wife of the deceased and interested witness. Based on her evidence, the negligence cannot be fixed. The Tribunal erred in fixing negligence, relying on the FIR registered against the driver of the appellant. The respondents have not proved the age, occupation and income of the deceased. In the absence of any evidence, the notional income fixed 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 and perused all the materials on record.

5.From the materials available on record, it is observed that the Tribunal has fixed the negligence on the part of the driver of the bus, by observing the evidence of PW2 which speaks not only the negligence but the recitals made in the FIR. Both the evidence of PW2 and contents in the FIR corroborates that the negligent attitude by the driver of the bus resulted in the said accident. Hence, the observation made by the Tribunal based on the relevant documents as well as the evidence. The finding of the Tribunal in fixing the negligence on the driver of the bus is very much appropriate. In the claim application the respondents/claimants herein have contended that the deceased was hale and healthy and was a goldsmith, earning a sum of Rs.9,000/- per month at the time of the accident, but they failed to produce the documents to substantiate the said contention. In the absence of any material, the Tribunal has

fixed notional income of the deceased at Rs.6,000/- per month by including 25% towards future prospects which are properly considered by the Tribunal. Considering Ex.P2/postmortem certificate, the Tribunal has fixed age of the deceased as 42 years at the time of accident. The accident is of the year 2016. The appellant is very much aggrieved against the deduction of 1/4th towards personal expenses, hence, the appellant sought for deduction of 1/3rd towards personal expenses which is proper in this case. The Tribunal has applied correct multiplier '14'. The amount granted by the Tribunal towards loss of dependency is modified to Rs.9,10,000/- [(Rs.6,500/- + 1,625 (Rs.6,500/- x 25%) 12 x 14 x 2/3). The sum awarded by the Tribunal under other heads are properly considered and hence 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.10,23,750/-	Rs.9,10,000/-
2.	Loss of estate	Rs.15,000/-	Rs.15,000/-
3.	Loss of consortium	Rs.40,000/-	Rs.40,000/-
4.	Funeral expenses	Rs.15,000/-	Rs.15,000/-
	Total	Rs.10,93,750/-	Reduced by Rs.9,80,000/-

6.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.10,93,750/- is hereby reduced to Rs.9,80,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. No costs. Consequently, the Civil Miscellaneous Petition is closed.

7.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, respondents 1, 4 & 5 are

permitted to withdraw their respective share of the modified award amount, along with proportionate interest and costs, less the amount if any, already withdrawn. The share of the minor/respondents 2 & 3 are directed to be deposited in any one of the Nationalised Bank till the minor attains majority. The 1st respondent being the mother of the respondents 2 & 3 is permitted to withdraw the accrued interest once in three months for the welfare of the minors.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

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

+1cc to MrD.Venkatachalam, Advocate Sr.67347

C.M.A.No.3056 of 2019
and
C.M.P.No.16720 of 2019

ss[col]
srg 11/12/2019

WEB COPY