

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.4604 of 2019
and

C.M.P.No.26098 of 2019

The Managing Director
Tamil Nadu State Transport Corporation
Kumbakonam Limited
Kumbakonam Taluk. Appellant /Respondent

Vs.

1.Kannan
2.Usha
3.Aadalarasan
4.Sabanayagam
5.Gopu
6.Thangapriya Respondents/Claimants

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 16.04.2019 made in M.C.O.P.No.20 of 2018 on the file of Motor Accident Claims Tribunal, Principal Sub Court, Myladudurai.

For Appellant : Mr.D.Venkatachalam

For Respondents : Mr.T.Gopinath

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Transport Corporation challenging the award dated 16.04.2019 made in M.C.O.P.No.20 of 2018 on the file of Motor Accident Claims Tribunal, Principal Sub Court, Myladudurai.

2.The appellant/Transport Corporation is the respondent in M.C.O.P.No.20 of 2018 on the file of Motor Accident Claims Tribunal, Principal Sub Court, Myladudurai. The respondents filed the said claim petition claiming a sum of Rs.40,00,000/- as compensation for the death of one Tamilarasan, who died in the accident that took place on 01.10.2017.

3. According to the respondents/claimants, on 01.10.2017 at about 7.30 p.m., while the deceased was riding in his motorcycle along with one Arivazhagan as pillion rider from West to East direction on the extreme left side, the bus belonging to the appellant/Transport Corporation, which was coming in the opposite direction, driven by its driver in a rash and negligent manner, dashed against the motorcycle driven by the deceased and caused the accident. Due to the injuries, the deceased died on the way to hospital. The accident occurred due to rash and negligent driving by the driver of the bus belonging to the appellant/Transport Corporation and therefore, the respondents/claimants filed the above claim petition claiming compensation.

4. The appellant filed counter statement denying the averments made in the claim petition and contended that the driver of the appellant/Transport Corporation drove the bus very carefully and cautiously. The deceased without noticing the bus coming in the opposite direction, rode the motorcycle in a rash and negligent manner, hit the front side bumper of the bus and invited the accident. The deceased did not wear helmet at the time of accident. He had no valid driving licence and his motorcycle was not insured. Therefore, the appellant/Transport Corporation is not liable to pay compensation to the respondents.

5. Before the Tribunal, the 1st respondent/father of the deceased, examined himself as P.W.1, one Baskar, eye-witness, was examined as P.W.2 and marked six documents as Exs.P1 to P6. On the side of the appellant, one Ravichandran, driver of the bus, was examined as R.W.1 and no documentary evidence was let in.

6. 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 to pay a sum of Rs.22,48,000/- as compensation to the respondents.

7. Against the said award dated 16.04.2019 made in M.C.O.P.No.20 of 2018, granting compensation to the respondents, the appellant/Transport Corporation has come out with the present appeal.

8. Though the learned counsel appearing for the appellant/Transport Corporation has raised a ground in the grounds of appeal with regard to negligence fixed on the part of the appellant, when the matter is taken up for hearing, he has

restricted his arguments only with regard to quantum of compensation awarded by the Tribunal.

9.The learned counsel appearing for the appellant/Transport Corporation contended that the respondents have not proved the avocation and income of the deceased. In the absence of material evidence, the Tribunal erred in fixing a sum of Rs.15,000/- per month as notional income of the deceased and awarded excessive amount towards loss of dependency. The Tribunal has awarded a sum of Rs.1,00,000/- towards loss of love and affection to the appellants 3 to 6/brothers and sister of the deceased, who are not dependants of the deceased. A sum of Rs.20,000/- awarded by the Tribunal towards funeral expenses is excessive and prayed for allowing this appeal.

10.Per contra, the learned counsel appearing for the respondents contended that the deceased was working in a temple at Srilanka and was earning a sum of Rs.30,000/- per month. A sum of Rs.15,000/- per month fixed by the Tribunal as notional income of the deceased is meagre. The respondents 3 to 6 are also dependants of the deceased and entitled to get compensation. The appellant/Transport Corporation has not made out any case for reduction of compensation and prayed for dismissal of the appeal.

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

12.From the materials available on record, it is seen that though the respondents have contended that the deceased was earning a sum of Rs.30,000/- per month in Srilanka, they have not substantiated their claim by producing any document with regard to avocation and income of the deceased. In the absence of any material evidence, the Tribunal has fixed a sum of Rs.15,000/- per month as notional income of the deceased. The accident is of the year 2017 and the monthly income fixed by the Tribunal is not excessive and hence, it is not interfered with. As per the judgment of the Hon'ble Apex Court, a sum of Rs.15,000/- can be awarded towards funeral expenses. The Tribunal has granted a sum of Rs.20,000/- towards funeral expenses, which is excessive and the same is hereby reduced to Rs.15,000/-. The Tribunal has awarded a sum of Rs.50,000/- each towards loss of love and affection to the respondents 1 and 2, who are parents of the deceased, which is excessive. This Court reduces the same to Rs.40,000/- each. In addition to that, the Tribunal has awarded a sum of Rs.1,00,000/- towards loss of love and affection to the respondents 3 to 6, who are brothers and sister of the deceased and the same is excessive. Therefore, a sum of Rs.1,00,000/- awarded by the Tribunal towards loss of

love and affection to the respondents 3 to 6 is hereby set aside. The Tribunal has not granted any amount towards loss of estate and this Court awards a sum of Rs.15,000/- towards loss of estate. The amounts awarded by the Tribunal under other heads are not excessive and the same are hereby confirmed. 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 or reduced
1.	Loss of dependency	20,16,000	20,16,000	Confirmed
2.	Loss of love and affection to the respondents 1 & 2	1,00,000	80,000	Reduced
3.	Loss of love and affection to the respondents 3 to 6	1,00,000	-	Set aside
4.	Funeral expenses	20,000	15,000	Reduced
5.	Transportation	10,000	10,000	Confirmed
6.	Damage to clothing	2,000	2,000	Confirmed
7.	Loss of estate	-	15,000	Granted
	Total	22,48,000	21,38,000	Reduced by Rs.1,10,000 /-

13. With the above modification, the Civil Miscellaneous Appeal is partly allowed. The compensation of Rs.22,48,000/- awarded by the Tribunal is hereby reduced to Rs.21,38,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant/Transport Corporation is directed to deposit the modified award amount along 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. On such deposit, the respondents/claimants are permitted to

withdraw their respective share of the award amount along with proportionate interest and costs, as per the apportionment made by the Tribunal, after adjusting the amount if any, already withdrawn. The appellant/Transport Corporation is permitted to withdraw the excess amount lying in the deposit to the credit of M.C.O.P.No.20 of 2018, if the entire award amount has already been deposited by them. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1.The Principal Subordinate Judge
Motor Accident Claims Tribunal
Myladudurai.

2.The Section Officer
VR Section
High Court
Madras.

+1cc to M/s.D.Venkatachalam, Advocate Sr.102146
+1cc to M/s.T.Gopinath, Advocate Sr.101937

C.M.A.No.4604 of 2019

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