

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.4605 of 2019
and C.M.P.No.26105 of 2019

The Managing Director
Tamil Nadu State Transport Corporation Ltd.,
Madurai. .. Appellant /Respondent

Vs.

1.Malarvizhi
2.Velmurugan
3.Kalaiselvi
4.Radhakrishnan
5.Rukkumani .. Respondents /Claimants

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 26.10.2018 made in M.C.O.P.No.25 of 2016 on the file of Motor Accidents Claims Tribunal, Sub Court, Thittakudi.

For Appellant : Mr.D.Venkatachalam

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award dated 26.10.2018 made in M.C.O.P.No.25 of 2016 on the file of Motor Accidents Claims Tribunal, Sub Court, Thittakudi.

2.The appellant/Transport Corporation is respondent in M.C.O.P.No.25 of 2016 on the file of Motor Accidents Claims Tribunal, Sub Court, Thittakudi. The respondents filed the above claim petition claiming a sum of Rs.20,00,000/- as compensation for the death of one Pazhamalai, who died in the accident that took place on 05.04.2016.

3.According to the respondents/claimants, on the date of accident i.e., on 05.04.2016 at about 16.00 hours, while the deceased Pazhamalai was riding in his motorcycle from his residence Kothattai from Pennadam, the bus belonging to the appellant/Transport Corporation, which was coming in the same direction, driven by its driver in a rash and negligent manner, dashed at the back side of the motorcycle of the deceased and

caused the accident. He succumbed to the injuries on 06.04.2016. Therefore, the respondents have filed the claim petition claiming compensation.

4.The appellant/Transport Corporation filed counter statement denying the averments made in the claim petition and contended that the accident did not occur due to rash and negligent driving by the driver of the bus belonging to the appellant. At the time of accident, the deceased had no valid driving license and he did not wear helmet. The claim petition is bad for non-joinder of owner and insurer of the motorcycle in which the deceased was riding. The accident occurred due to rash and negligent riding of the motor cycle by the deceased and the appellant/Transport Corporation is not liable to pay compensation.

5.Before the Tribunal, the 2nd respondent/son of the deceased, examined himself as P.W.1 and one Sekar, eye-witness to the accident, was examined as P.W.2 and marked eleven documents as Exs.P1 to P11. On the side of the appellant, one Chandrakumar, 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/Transport Corporation to pay a sum of Rs.15,33,657/- as compensation to the respondents.

7.Against the said award dated 26.10.2018 made in M.C.O.P.No.25 of 2016, granting compensation to the respondents, the appellant/Transport Corporation has come out with the present appeal challenging the quantum of compensation.

8.The learned counsel appearing for the appellant/Transport Corporation contended that the respondents 2 to 5 are married sons and daughters of the deceased and they cannot be considered as dependants of the deceased. The Tribunal erred in deducting 1/4th towards personal expenses of the deceased. As per the judgment of the Hon'ble Apex Court, 1/3rd has to be deducted towards personal expenses. He further contended that the Tribunal has failed to note that even after the death of deceased, the family pension will be given to the wife of the deceased. The Tribunal erred in calculating the loss of dependency by taking the entire monthly pension as the income of the deceased. The amount received by the wife of the deceased towards family pension has to be deducted from the actual pension to be taken as the monthly income for calculating the loss of dependency and prayed for allowing the appeal.

9. Heard the learned counsel appearing for the appellant and perused the materials available on record.

10. From the materials available on record, it is seen that the respondents have contended that the deceased was aged 69 years at the time of accident and was a retired teacher and was earning a sum of Rs.24,000/- per month. They have filed Ex.P6/pension payment order and Ex.P7/Savings Account Bank Pass Book of the deceased to prove that the deceased was drawing pension of Rs.24,865/- per month. The contention of the learned counsel appearing for the appellant that the Tribunal has failed to consider that the 1st respondent/wife of the deceased would get family pension is without merits. The family pension cannot be treated as income for a widow. The Tribunal has rightly fixed income of the deceased at Rs.18,514/- for calculating loss of dependency. Though the learned counsel appearing for the appellant contended that the respondents 2 to 5 are married daughters and sons of the deceased and hence, they are not dependents of the deceased, they have not let in any contra evidence to disprove the same. There are five claimants and therefore, the Tribunal has rightly deducted 1/4th towards personal expenses, which is proper. The Tribunal after considering both oral and documentary evidence let in by the respondents, awarded a total sum of Rs.15,33,657/- as compensation to the respondents under different heads. In my considered opinion, the compensation awarded by the Tribunal is just and reasonable and it does not warrant any interference by this Court.

11. In the result, the award passed by the Tribunal is hereby confirmed and the Civil Miscellaneous Appeal is dismissed. The appellant/Transport Corporation is directed to deposit the award amount granted by the Tribunal 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 shares of the award amount as apportioned by the Tribunal along with proportionate interest and costs, after adjusting the amount, if any, already withdrawn. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

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To

1.The Subordinate Judge
(Motor Accident Claims Tribunal),
Thittakudi.

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

+lcc to Mr.D.Venkatachalam, Advocate, S.R.No. 102147

C.M.A.No.4605 of 2019
and C.M.P.No.26105 of 2019

GP(CO)
GN(23/11/2020)