



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 17.06.2019
CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

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CMA(MD)No.251 of 2014 and
MP(MD)No.2 of 2014 and
CROS.OBJ(MD)No.24 of 2015

CMA(MD)No.251 of 2014:-

M/s.Tamil Nadu State Transport Corporation
(Kumbakonam) Limited,
Represented by its Managing Director,
Having office at
Periamilaguparai Cantonment,
Tiruchirappalli-620001.

... Appellant/Repondent

vs.

1) Susila
2) Muthukumar
3) Divya
4) Rajammal

... Respondents/Petitioners

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree made in MCOP.No.344 of 2013 dated 25.04.2013 on the file of the Motor Accidents Claims Tribunal/Special District Court, Tiruchirappalli.

For Appellant	: Mr.P.Prabhakaran
For R1 to R4	: Mr.N.Sudhagar Nagaraj

CROS.OBJ(MD)No.24 of 2015:-

1) Susila
2) Muthukumar
3) Divya
4) Rajammal

... Cross Objectors/Respondents 1 to 4

vs.

M/s.Tamil Nadu State Transport Corporation
(Kumbakonam) Limited,
Represented by its Managing Director,
Having office at
Periamilaguparai Cantonment,
Tiruchirappalli-620001.

... Respondent/Appellant



Cross Objection filed under Order 41 Rule 22(1) of C.P.C., against the judgment and decree made in MCOP.No.344 of 2013 passed by the learned Motor Accidents Claims Tribunal/Special District Court, Tiruchirappalli, dated 25.04.2013, for enhancing the compensation as Rs.5,00,000/-.

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For Cross Objectors : Mr.N.Sudhagar Nagaraj
For Respondent : Mr.P.Prabhakaran

COMMON JUDGMENT

This appeal has been filed against the judgment and decree made in MCOP.No.344 of 2013 dated 25.04.2013 on the file of the Motor Accidents Claims Tribunal/Special District Court, Tiruchirappalli.

Cross Objection has been filed under Order 41 Rule 22(1) of C.P.C., against the judgment and decree made in MCOP.No.344 of 2013 passed by the learned Motor Accidents Claims Tribunal/Special District Court, Tiruchirappalli, dated 25.04.2013, for enhancing the compensation as Rs.5,00,000/-.

2.The facts of the case are that on 21.12.2009, when the husband of the 1st respondent and father of respondents 2 to 4 in the appeal namely, Selvaraj was driving a Tata Sumo Car bearing registration No.TN-27-K-6775 along with his brother and two others on Trichy-Chennai By-pass road, near Y Road turning, the appellant transport corporation bus bearing registration No.TN-45-N-1869 came from the opposite direction in a rash and negligent manner and dashed against the Car driven by Selvaraj, in which, the said Selvaraj sustained grievous injuries and despite treatment, he died on 22.12.2009. The legal heirs of the deceased filed a claim petition claiming compensation of Rs.20,00,000/-. The appellant transport corporation resisted the claim by filing counter disputing the manner of accident and the compensation claimed under various heads. Considering the oral and documentary evidence adduced on either side, the Tribunal held that the driver of the appellant bus was responsible for the accident and directed the appellant to pay compensation of Rs.10,06,716/- with 6% interest from the date of claim petition till the date of deposit. Aggrieved by the said award, the transport corporation has filed this appeal to set aside the award and seeking enhancement of compensation, the claimants have filed cross objection.

3.Learned counsel for the appellant would contend that the deceased by himself without noticing the turning of the bus, drove the Car in a rash and negligent manner and dashed against the bus and invited the accident. On the quantum of compensation, learned counsel would contend that fixation of monthly income of the deceased at Rs.8,000/- is very high and a sum of Rs.40,000/- awarded for loss of love and affection is unsustainable.

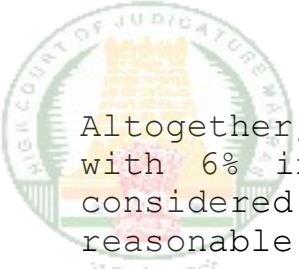


4. Though the cross objection has been filed for enhancing the compensation, when the matter is taken up for hearing, learned counsel for the Cross Objectors/claimants would submit that he is not pressing the cross objection and would submit that the award of the Tribunal is reasonable and therefore, no interference is required from this Court. The said submission is recorded.

5. Heard the learned counsel for the appellant as well as the respondents.

6. Perusal of record shows that to prove the manner of accident, the claimants have examined the eye witness to the accident as PW2 who has stated that the driver of the bus without noticing the car, suddenly turned the bus in the right direction to reach the road leading to Thiruvanaikaval. Though RW1-driver of the appellant bus has stated that the deceased drove the car in a rash and negligent manner, in his cross examination, RW1 has denied the suggestion that the accident has occurred while he turned the bus, but he has stated that he stopped the bus at the gap of the turning point. However, in Ex.P8-rough sketch, the bus was shown in the road leading towards Chennai from Trichy. Considering the said incongruity, the Tribunal rejected the evidence of RW1. Though PW2 was cross examined by the appellant, nothing was elicited to disprove his version regarding the manner of accident. Though the appellant has contended that RW1 has been acquitted by the criminal court and therefore, he is not responsible for the accident, this Court is not inclined to accept the same as the test to arrive at negligence in claims cases is only preponderance of probability and not strict proof of evidence as required in criminal case. Testing the finding of the Tribunal regarding negligence on the abovesaid principle, I do not find any infirmity to interfere with the same.

7. On the quantum of compensation, the claimants claimed that the deceased earned Rs.15,000/- per month as a lorry driver and lorry broker. They marked Ex.P6 which is the lorry sale agreement made by the deceased with third person. The Tribunal upon perusal of Ex.P6 and finding that all those agreements have their origins at Rasipuram and the deceased was also operating his business from Rasipuram, held that the avocation of the deceased is proved, but there is no averment in Ex.P6 with respect to the income of the deceased. Therefore, the Tribunal based on Ex.P6 fixed the income of the deceased at Rs.8,000/- per month. After deducting 1/4th towards personal expenses and applying 13 multiplier, the Tribunal calculated the loss of income at Rs.9,36,000/- (Rs.8000x12-1/4x13). In addition to the above, the Tribunal has awarded Rs.10,000/- for loss of consortium; Rs.40,000/- for loss of love and affection; Rs.10,000/- towards funeral expenses; Rs.5,000/- for transportation and Rs.5,716/- for medical expenses.



Altogether, the Tribunal awarded compensation of Rs.10,06,716/- with 6% interest per annum from the date of petition. In my considered opinion, the award passed by the Tribunal is very reasonable and therefore, the interference of this Court is not necessary.

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8.The appellant is directed to deposit the entire award amount with interest as awarded by the Tribunal, less the amount already deposited, if any, to the credit of the claim petition within a period of eight 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 as apportioned by the Tribunal without filing formal permission petition before the Tribunal.

9.With the above direction, this Civil Miscellaneous Appeal is dismissed and in view of the submission of the learned counsel for the Cross Objectors, the cross objection is also dismissed as not pressed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar (CS)

To

- 1)The Special District Judge,Motor Accidents Claims Tribunal, Tiruchirappalli.
- 2)The Section Officer,V.R. Section Madurai Bench of Madras High Court,Madurai.(2 Copies)

+1cc to Mr.P.PRABHAKARAN,Advocate, SR.No.69296

+1cc to Mr.N.SUDHAGAR NAGARAJ,Advocate, SR.No. 69092

CMA (MD) No.251 of 2014 and
CROS.OBJ (MD) No.24 of 2015

NA (30.07.2019) 4P :6C