



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.04.2019

CORAM:

**THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
AND
THE HONOURABLE MRS.JUSTICE R.THARANI**

C.M.A(MD)NO.395 of 2018

and

C.M.P(MD)No.5022 of 2018

The Managing Director,
M/s.Tamil Nadu State Transport corporation Limited,
Periyamilaguparai,
Trichirappalli.

:Appellant/Respondent

.vs.

1.Neela

2.Rajathi

:Respondents/Petitioners

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, praying this Court to set aside the award and decree made in M.C.O.P.No.1506 of 2015, dated 21.11.2017 on the file of the Motor Accident Claims Tribunal/Special District Court, Trichirappalli.

For Appellant : Mr.P.Prabhakaran

For Respondents : Mr.V.Nirmal Kumar
Caveator

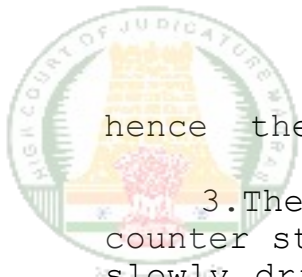
JUDGMENT

[Judgment of the Court was made by **K.KALYANASUNDARAM, J.**]

Aggrieved over the award of the Motor Accident Claims Tribunal passed in M.C.O.P.No.1506 of 2015, dated 21.11.2017, the Transport Corporation has come up with this appeal.

2.The facts in brief:

According to the claimants, on 3.10.2015, at about 9.30 p.m., the deceased was going by walk along Trichy-Madurai main road near Edamalaipattyputhur. At that time, the bus belonging to the Transport Corporation was driven by its driver in a rash and negligent manner and hit against the deceased. In the impact, the deceased sustained grievous injuries and died on the spot and



hence they are entitled for a compensation of Rs.75,00,000/-

3.The claim was opposed by the appellant by filing a detailed counter stating that the driver of the bus was very cautiously and slowly driven his vehicle, but the accident had taken place only due to the negligence of the deceased.

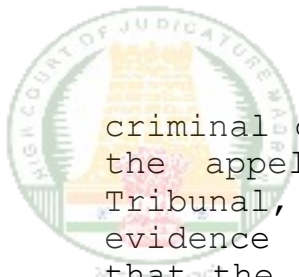
4.Before the Tribunal, in order to prove the case of claimants, P.Ws.1 to 3 were examined and they marked Ex.P1 to Ex.P17. On the side of the Transport Corporation, the driver of the bus was examined as R.W.1 and Inspector of Police, Traffic South Investigation, Trichy was examined as R.W.2 and they marked Ex.X1 and Ex.X2.

5.The Tribunal, after analyzing both oral and documentary evidence, held that the accident had occurred due to the negligence of the driver of the bus and awarded compensation of Rs.44,45,000/-. Assailing the same, the appellant/Transport corporation has filed the present appeal.

6.Mr.P.Prabhakaran, learned counsel for the appellant vehemently contended that the award of the Tribunal is excessive and exorbitant. It is the submission of the learned counsel for the appellant that the deceased was a student at the time of accident, but the Tribunal fixed notional income of the deceased at Rs.20,000/-p.m. without any proof. Further, the Tribunal instead of deducting 50%, has deducted 1/3rd towards his personal and living expenses. It is also contended that the evidence of R.W.1 and R.W.2 would establish that the deceased was responsible for the accident.

7.Per contra, the learned counsel for the respondents would submit that the negligence has been proved by the claimants by examining the eye-witnesses P.W.2 and 3 and the mere closure of the case as 'mistake of fact', cannot be taken into consideration to fix negligence on the deceased. According to the learned counsel, the deceased was a student studying in fourth year Mechanical Engineering at Pannari Amman Institute of Technology at Sathyamangalam and he was having a bright future and after completing his course, he will get a minimum salary of Rs.30,000/-p.m.,but the Tribunal has failed to appreciate those facts and awarded a lesser compensation.

8.In the case on hand, the deceased Kannusamy died in the accident on 3.10.2015 is not in dispute. P.W.2 has deposed that at the time of accident, he was standing near SIS Agropaul Apartment at Edaimalaipattiputhur and at that time, the deceased Kannusamy was walking at the extreme left side of the road, but the driver of the Transport Corporation bus come in a high speed and dashed against him. Ex.P1-First Information Report, shows that a criminal case has been registered against the driver of the bus. The Respondent by examining R.W.2, have brought on record that the



criminal case was closed as a 'mistake of fact' and according to the appellant, the driver of the bus was not negligent. The Tribunal, in our considered view, has rightly accepting the evidence of P.W.2 and Ex.P1 has rightly come to the conclusion that the driver of the bus has caused the accident and fixed the negligence on the driver of the bus.

9.As far as the quantum is concerned, it is not disputed that the deceased was studying in fourth year Mechanical Engineering Course in Pannari Amman Institute of Technology. Ex.P4 to Ex.P15 would corroborate the evidence of P.W.1, who is the mother of the deceased. The Tribunal based on the evidence of P.W.1 and exhibits referred to supra, has taken the income of the deceased at Rs.20,000/-p.m. As per the **Pranay Sethi's case, (National Insurance Company Limited .vs. Pranay Sethi and others reported in (2017) 16 Supreme Court Cases, 680)**, the claimants would be entitled to additional 40% towards future prospects. Hence, the income of the deceased is arrived at Rs.28,000/-p.m. It is settled law in the case of Bachelors, 50% has to be deducted towards their personal and living expenses. Hence, the contribution to the family would be Rs.14,000/-p.m. The Tribunal has applied multiplier '18' and accordingly, the loss of income is arrived at Rs.30,24,000/-. In addition, Rs.70,000/- is awarded towards conventional damages and hence the claimants would be entitled to Rs.30,94,000/-, rounded off to Rs.30,90,000/- along with interest at 7.5% p.a.

10.In the result, Civil Miscellaneous Appeal is partly allowed reducing the award amount from Rs.44,45,000/- to Rs.30,90,000/- with interest at 7.5% from the date of claim petition till the date of realization. Out of the above said award amount, the first claimant is entitled a sum of Rs.25 lakhs and the second claimant is entitled to a sum of Rs.5,90,000/-, together with proportionate accrued interest and costs.

11.It is represented that the appellant/Transport Corporation has deposited the entire award amount to the credit of the claim petition and the claimants are permitted to withdraw 50% of their share in the award amount. Hence the claimants are permitted to withdraw the balance modified award amount with proportionate accrued interest and costs by filing necessary application before the Tribunal. The Tribunal is directed to refund the excess award amount to the appellant/Transport Corporation. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (AE)

// True Copy //



To

1.The Motor Accident Claims Tribunal
(Special District Court).
Trichirappalli.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai. (2 COPIES)

+1CC TO MR.P.PRABHAKARAN, Advocate Sr. No.58840

+1CC TO MR.V.NIRMAL KUMAR, Advocate Sr. No.59148

JUDGMENT MADE IN
C.M.A(MD) NO.395 of 2018
and
C.M.P(MD) No.5022 of 2018
04.04.2019

TR (26.04.2019) 4P 6C