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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 12.06.2019
CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CMA(MD)No.513 of 2018
and
CMP(MD)No.6072 of 2018

The Managing Director,
Tamil Nadu State Transport Corporation, Kumbakonam Limited,
Periamilakuparai,
Trichy. ... Appellant/Respondent

vs.

1)Thirumamani
2)Malaikolundhan ... Respondents/Petitioner

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree made in MCOP.No.39 of 2017 dated 25.01.2018 on the file of the Motor Accidents Claims Tribunal/Principal Sub Court, Karur.

For Appellant : Mr.P.Prabhakaran
For Respondents : Mr.K.Suresh Kumar

JUDGMENT

Challenging the negligence fixed on the driver of the appellant corporation bus and the consequential liability fastened on the appellant transport corporation to pay compensation and also the quantum of compensation, this appeal has been filed.

2.The facts of the case are that on 26.09.2010, when the son of the respondents was riding a motor cycle on Karur-Trichy main road, at Manavasi bus stop, the driver of the appellant transport corporation came in the opposite direction in a rash and negligent manner and dashed against the motor cycle driven by the son of the claimants, in which, he sustained grievous head injury and fatal injuries and died on the spot. The claimants/parents of the deceased claimed compensation of Rs.10,00,000/-. The appellant corporation resisted the claim. The Tribunal considering the oral and documentary evidence on either side, fixed the negligence on the driver of the appellant and consequently directed the appellant to pay compensation of Rs.9,10,000/- to the claimants with 7.5% interest per annum from the date of claim petition till the date of deposit. Aggrieved by the said award, the appellant has filed this appeal.

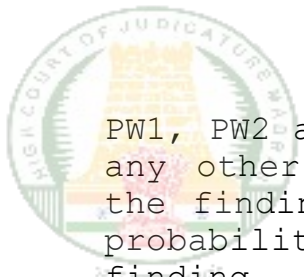
3.Learned counsel for the appellant would contend that without appreciating the evidence adduced on the side of the appellant in proper perspective, the Tribunal has erroneously fixed the negligence on the driver of the bus owned by the appellant. On the

quantum of compensation, it is contended that the Tribunal ought to have deducted 50% towards the personal expenses instead of 1/4th as the deceased was a bachelor at the time of accident and further, the determination of monthly income at Rs.5,000/- is without any basis and the award of Rs.90,000/- towards loss of love and affection is grossly excessive. Thus, he prays for interference of this Court.

4.Learned counsel for the respondents/claimants would contend that as regards the manner of accident, though the appellant examined the driver of the bus as RW1, his evidence is not supported by any other witness and even the Tribunal rejected the evidence of RW2-Sub Inspector of Police holding that he was not the investigating officer in this case and therefore the learned counsel would state that the finding of the Tribunal fixing negligence on the driver of the bus need not be interfered with. On the quantum of compensation, he would contend that as per the judgment in **Syed Sadiq vs. United India Insurance Co.Ltd.**, reported in **2014 (1) TN MAC 459(SC)**, the Tribunal ought to have fixed the monthly income of the deceased at Rs.6,500/- even when there is no proof for income produced and the Tribunal also failed to award reasonable sum for future prospects and 40% of income towards future prospects ought to have been awarded as per the judgment of the Apex Court in **National Insurance Company Limited vs. Pranay Sethi and others (Special Leave Petition(Civil)No.25590 of 2014 dated 31.10.2017)** and as per the same judgment, the claimants are also entitled to compensation under conventional heads, namely, Rs.15,000/- each towards loss of estate and funeral expenses. Thus, he prayed for enhancement on the quantum.

5.Heard both sides and perused the records.

6.Perusal of records shows that father of the deceased examined himself as PW1 and reiterated the manner of accident. PW2 is an eye witness. The first informant who lodged Ex.P1-FIR is also an eye witness. The manner of accident spoken to by PW1 is supported by PW2 and corroborated by Ex.P1-FIR. On the contrary, the appellant examined the driver of the bus as RW1 who has stated that only the deceased came in a rash and negligent manner, dashed against the bus by himself and invited the accident. The appellant has also marked the criminal court judgment as Ex.R1 by which, the criminal court acquitted RW1. Though the appellant examined the Sub Inspector of Police as RW2 through whom marked Ex.X1-Rough Sketch, the Tribunal found from the cross examination of RW2 that he neither prepared the rough sketch nor was the investigating officer for this case and therefore, disbelieved the version of RW2. Though the appellant contended that the driver of the corporation bus was acquitted by the criminal court finding that he was not responsible for the accident, in claims cases, the test to arrive at negligence is only preponderance of probability and not strict proof evidence as required in criminal case. In the present case, the manner of accident is amply proved by the evidence of



PW1, PW2 and Ex.P1, whereas the evidence of RW1 is not supported by any other independent witness nor documents. Therefore, testing the finding of the Tribunal on the principles of preponderance of probability, I do not any infirmity to interfere with the above finding.

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7. On the quantum of compensation, the claimants claimed that at the time of accident, the deceased was aged 30 years and was a bachelor and by selling yarn, he earned Rs.15,000/- per month. However, in the absence of proof for income, the Tribunal fixed the notional income of the deceased at Rs.5,000/- per month and deducting 1/4th towards the personal expenses and applying 18 multiplier, the Tribunal awarded compensation for loss of income at Rs.8,10,000/-. Apart from the above, the Tribunal awarded Rs.90,000/- towards loss of love and affection and Rs.10,000/- towards funeral expenses. Altogether, the Tribunal awarded compensation of Rs.9,10,000/- with 7.5% interest per annum.

8. Though the appellant contended that the Tribunal ought to have deducted 50% towards the personal expenses, since the deceased was a bachelor and that the award towards loss of love and affection is on the higher side, this Court is not inclined to accept the said submission for the reason that even for a vegetable vendor, the Apex Court in **Syed Sadiq vs. United India Insurance Co.Ltd.**, reported in **2014 (1) TN MAC 459(SC)**, has fixed Rs.6,500/- as monthly income where there was no proof of income and as per the judgment of the Apex Court in **National Insurance Company Limited vs. Pranay Sethi and others (Special Leave Petition(Civil)No.25590 of 2014 dated 31.10.2017)**, the Tribunal ought to have awarded future prospects. If the monthly income of the deceased is fixed at Rs.6,500/- and 40% future prospects is added, the loss of income would be more. The claimants have also restricted their claim to Rs.10,00,000/- and therefore I am not inclined to interfere with the award.

9. 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 with interest without filing formal permission petition before the Tribunal.

Accordingly, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-II)

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To

1) The Principal Sub Judge,
Motor Accidents Claims Tribunal,
Karur.

2) The Section Officer,
V.R. Section
Madurai Bench of Madras High Court,
Madurai. (2 COPIES)

+1CC TO MR.P.PRABHAKARAN, Advocate Sr. No.68102

+1CC TO MR.K.SURESH KUMAR, Advocate Sr. No.68119

CMA (MD) No.513 of 2018
12.06.2019

KMV (CO)

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