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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.12.2020

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

C.M.A.NO.3279 OF 2019

1. Valarmathi,
W/o.Uthirapathi
2. Uthirapathi,
S/o.Pichaimuthu
3. Sathyamurthy,
S/o.Uthirapathy

All are residing at
Angarayanallur Post,
Udayarpalayam Taluk,
Ariyalur District.

... Appellants/Claimants

.Vs.

The Manager,
Tamil Nadu State Transport Corporation,
Periyamiguparai,
Trichy.

... Respondent/Respondent

PRAYER:-

Civil Miscellaneous Appeal preferred under Section 173 of Motor Vehicles Act against the judgment and award passed in M.C.O.P.No.213 of 2015, dated 15.11.2018 on the file of the Motor Accident Claims Tribunal, (Additional District Sessions Judge), Ariyalur.

For Appellants : Mr.P.Parthi Kannan

For Respondent : Mr.D.Venkatachalam



J U D G M E N T

Against the dismissal of claim petition, the claimants are before this Court with this Civil Miscellaneous Appeal seeking for enhancement of compensation.

2. The case of claimants in brief is as follows :-

It is a case of fatal accident. On 25.04.2016 at about 07.30 p.m. while the deceased standing with the two wheeler and talking with his friend at T.Pazhur to Jayankondam main road, near Kazhuvanthondi bus stand, the respondent transport corporation bus bearing No.TN-45 N-2466, came in a rash and negligent manner, dashed against the deceased, and two other persons standing therein, in which, the deceased sustained fatal injury and two other persons sustained severe injury. Thereafter, a false complaint has been filed against the deceased by the driver of transport corporation bus. The deceased was an I.T.I. Diploma holder, working in a two wheeler service station and earning Rs.15,000/- per month, and he was the sole bread-winner of the family. Hence, claiming compensation of Rs.25,00,000/-, the parents and brother of deceased filed a claim petition.

3. The respondent transport corporation has contested the claim petition that, the accident was not taken place due to the negligence of the driver of respondent transport corporation bus and only the deceased had dashed the vehicle against transport corporation bus and also disputed the income of deceased.

4. Before the Tribunal, the claimants have examined 3 witnesses, and marked as many as six documents. On the side of the respondent, the driver of 1st respondent was examined as R.W.1 and final report filed by the police has been marked as Ex.R1.

5. The Tribunal, after considering the materials available on record, has dismissed the claim petition. Now, challenging the judgment of the Tribunal, the present Civil Miscellaneous Appeal has been filed.

6. I have considered the rival submissions made by learned counsel appearing for appellants as well as the respondent and perused the materials available on records.

7. On perusal of judgment of the Tribunal, the Tribunal mainly relying upon the first information report filed by the driver of the respondent transport corporation bus, and held that, the accident has been taken place due to the negligent



driving of deceased and also the statement given by one of billion riders of two wheeler before the police during investigation. It is a settled law that, the Tribunal cannot decide the negligence based on the F.I.R. alone and the Tribunal ought to have considered the materials available on record. In the instant case, P.W.2 and 3 are the eye-witnesses to the occurrence, they have categorically stated that only due to the rash and negligent driving of driver of transport corporation bus, the accident was taken place and there is no reason to disbelieve their evidence. Considering those circumstances, the finding of the Tribunal is liable to be set aside. However, on perusal of evidence of P.W.2 and 3, it could be seen that at the time of accident, the deceased and injured persons standing on the road, without noticing the oncoming bus. In the said circumstances, the entire negligence cannot be fixed on the driver of transport corporation bus and the deceased also contributed to the accident, thus, 50% of negligence is fixed on the deceased.

8. So far as quantum of compensation is concerned, the deceased is working as I.T.I. Diploma holder and it was also stated that he was working in an automobile service station. Even assuming that, petitioner was earning Rs.300/- per day and working for 20 days a month, he will easily earn Rs.6000/- as monthly income. Hence, the monthly income of deceased was arrived at Rs.6000/-, adding 40% of future prospects, comes to Rs.8400/-. The deceased in this case was a bachelor, hence, 50% of monthly income is to be deducted towards his personal expenses, considering the age of deceased as 21 years, the multiplier of 18 is to be applied, and thus, the loss of dependency will be at Rs.9,07,200/-. A sum of Rs.80,000/- is granted towards filial consortium to the appellants 1 and 2, a sum of Rs.15,000/- each is granted towards loss of estate and funeral expenses, and a sum of Rs.5000/- is granted towards transport charges. However, as the 3rd appellant is the brother of deceased, he is not entitled to get any compensation. Thus, totally, this Court is inclined to grant a sum of Rs.10,22,200/- towards compensation, however, as 50% of negligence is fixed on the deceased, the claimants are entitled to get only a sum of Rs.5,11,100/- as compensation.

9. In the result, this Civil Miscellaneous Appeal is partly allowed and awarded a sum of Rs.5,11,100/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellants are directed to pay necessary Court fee, if any, on the compensation. The respondent/Insurance Company is directed to deposit the amount now determined by this Court along with interest, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such



deposit, the appellant is permitted to withdraw the amount awarded along with interest and costs. No costs.

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Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal,
Additional District Sessions Court,
Ariyalur.
2. The Section Officer,
V.R. Section,
High Court,
Madras - 104.

+1cc to Mr.S.Kaithamalai Kumaran, Advocate, S.R.No.39860
+1cc to Mr.D.Venkatachalam, Advocate, S.R.No.40168

C.M.A.NO.3279 OF 2019

RSI (CO)
PBS/01/10/2021