IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No. 3671 of 2019
and C.M.P. No. 20991 of 2019

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

Vs.

1.Vasanthi
2.Thirumurugan
3.Divya
4.Poongavanam .. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 28.08.2018, made in M.C.O.P. No. 257 of 2015, on the file of the Sub Court, (Motor Accident Claims Tribunal), Gingee.

For Appellant : Mr. D. Venkatachalam

For Respondents: Mr. A. Sathish Kumar
for M/s. C. Thangaraju

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant-Transport Corporation challenging the quantum of compensation granted by the award dated 28.08.2018, made in M.C.O.P. No. 257 of 2015, on the file of the Sub Court, (Motor Accident Claims Tribunal), Gingee.

2.The appellant is the respondent in M.C.O.P. No. 257 of 2015 on the file of the Sub Court, (Motor Accident Claims Tribunal), Gingee. The respondents filed the said claim petition, claiming a sum of Rs.1,00,00,000/- as compensation for the death of one Krishnan, who died in the accident that took place on 28.05.2015.

3.According to the respondents, on the date of accident, viz., 28.05.2015, the deceased was riding his TVS 50 from Sathampadi Village towards Valathi. When he was nearing Devanur road, the Driver of the Bus belonging to the appellant-Transportation Corporation bearing Registration No. TN-68-N-0406, came in the opposite direction at high speed and dashed against the TVS 50 and caused the accident. In the accident, the said Krishnan succumbed to injuries and therefore, the respondents filed the above claim petition, claiming compensation against the appellant-Transport Corporation.

4.The appellant-Transport Corporation filed counter statement and denied the various averments made by the respondents in the claim petition. According to the appellant, while the Bus was proceeding from Mayiladuthurai Bus stop, the deceased rider of the TVS 50 rode his vehicle negligently, in a rash manner and crossed the road and contributed to the accident. The claim petition is bad for non-joinder of owner and insurer of the TVS 50. The respondents have to prove that the deceased possessed valid driving license at the time of accident. The appellant denied the age, avocation and income of the deceased. The 4th respondent, father of the deceased is not a dependant of the deceased. In any event, the accident occurred only due to negligence on the part of the deceased, who voluntarily invited the accident and the hence, the appellant is not liable to pay any compensation and prayed for dismissal of the claim petition.

5.Before the Tribunal, the 1st respondent examined herself as P.W.1 and examined one Manokaran as P.W.2 and marked 2 documents as Exs.P1 & P2. The appellant examined one witness as R.W.1, but did not let in any documentary evidence.

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 to pay a sum of Rs.39,87,656/- as compensation to the respondents.

7.Challenging the quantum of compensation granted by the Tribunal in the award dated 28.08.2018, made in M.C.O.P. No. 257 of 2015, the appellant-Transport Corporation has come out with the present appeal.

8.Though the appellant-Transport Corporation raised various grounds with regard to the monthly income fixed by the Tribunal, at the time of arguments, he restricted his arguments only with regard to deduction made by the Tribunal towards personal expenses of the deceased and contended that the Tribunal erred in deducting only Rs.590/- towards personal and living expenses of the deceased. The Tribunal instead of deducting 1/4th towards the personal expenses of the deceased, erroneously deducted only a sum of Rs.590/- from the income and prayed for setting aside the award of the Tribunal.

9.Learned counsel appearing for the respondents made submissions in support of the award of the Tribunal and prayed for dismissal of the appeal.

10.Heard learned counsel appearing for the appellant as well as the respondents and perused the materials available on record.

11.It is the contention of the appellant-Transport Corporation that the Tribunal erred in deducting only a sum of Rs.590/- towards personal expenses of the deceased. It is the contention of the respondents that at the time of accident, the deceased was working as a Conductor in TNSTC, Villupuram Zone and was earning a sum of Rs.30,000/- per month. The deceased was aged 44 years at the time of accident. The Tribunal has taken the monthly income of the deceased as Rs.23,582.70/- and applied the multiplier '14' and after deducting 1/4th towards personal expenses of the deceased, awarded a sum of Rs.38,62,656/- as compensation. The said calculation of the Tribunal is erroneous and hence, the amount awarded by the Tribunal is to be modified. From the award of the Tribunal, it is seen that the Tribunal has not granted any enhancement towards future prospects of the deceased. Considering the age of the deceased, 30% enhancement is granted towards future prospects.

Calculation for income		
Monthly income		Rs.23,583/-
30% future prospects	(+)	Rs.7,074/-
		Rs.30,657/-
Annual income		Rs.3,67,884/-
2015 tax exemption	(-)	Rs.2,50,000/-
		Rs.1,17,884/-
10% of Rs.1,17,884/-	(-)	Rs.11,788/-
		Rs.1,06,096/-
	(+)	Rs.2,50,000/-
Income	(=)	Rs.3,56,096/-

After deducting 1/4th towards the personal expenses and applying the multiplier '14', the amount awarded by the Tribunal towards loss of dependency is modified to Rs.37,39,008/- [Rs.3,56,096/- x 14 x ¾]. The Tribunal has not awarded any amount towards loss of estate. Hence, a sum of Rs.15,000/- is awarded towards loss of estate. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same are confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependancy	38,62,656/-	37,39,008/-	Reduced
2.	Loss of love and affection	80,000/-	80,000/-	Confirmed
3.	Funeral expenses	15,000/-	15,000/-	Confirmed
4.	Loss of consortium	20,000/-	20,000/-	Confirmed
5.	Transport to Hospital	10,000/-	10,000/-	Confirmed
6.	Loss of estate	-	15,000/-	Granted
	Total	39,87,656/-	38,79,008/-	Reduced by Rs.1,08,648/-

12.For the above reason, the appeal is partly allowed and the compensation awarded by the Tribunal at Rs.39,87,656/- is modified to Rs.38,79,008/- along with interest and costs. The appellant is directed to deposit the award amount now determined by this Court, along with interest and costs, within a period of twelve weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P. No. 257 of 2015. On such deposit, the respondents/claimants are permitted to withdraw their respective share of the award amount now determined by this Court, along with proportionate interest and costs, less the amount already withdrawn if any, by filing necessary application before the Tribunal. The appellant-Transport Corporation is permitted to withdraw excess amount, if any, lying in the credit of M.C.O.P. No. 257 of 2015, if the entire award amount has already been deposited. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gsa
To

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

Copy to :
The Section Officer,
V.R Section,
High Court, Madras.

+1 cc to M/s.D.Venkatachalam, Advocate Sr.No. 15773
+2 cc to M/s.A.Sathiskumar, Advocate Sr.No. 16263

C.M.A. No. 3671 of 2019

GJ(CO)
RMP(18/01/2021)