

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.09.2020

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.M.A.No.2523 of 2019

1.Pavayee
2.Revathi
3.Bharathi

.. Appellants

vs.

The Managing Director
Tamil Nadu State Transport
Corporation Ltd.,
No.12, Ramakrishna Road
Salem-636 007.

.. Respondent/ Respondent

The Civil Miscellaneous Appeal is preferred under Section 173 of the Motor Vehicles Act, 1988, against the judgement and decree dated 21.12.2018 passed in MCOP.No.851 of 2017 on the file of the Motor Accident Claims Tribunal/Special District Judge Court, Salem, 2nd Additional District Judge (F/IC).

For Appellant : Mr.T.Arthanareeswaran

For Respondent : Mr.D.Raghu

J U D G M E N T

The judgment and decree dated 21.12.2018 passed in MCOP No.851 of 2017 by the Motor Accident Claims Tribunal/Special District Court, Salem, is under challenge in the present Civil Miscellaneous Appeal.

2. The claimants are the appellants and the appeal is filed seeking enhancement of compensation.

3. The accident occurred on 18.05.2016 at about 8.15 a.m at Tiruchengode - Rasipuram Main Road, near Elachipalayam Amman Hotel. The Elachipalayam Police Station, Namakkal District, registered a case in Crime No.121 of 2016 under Sections 279, 338 and 304(A) IPC. The deceased Mr.Kandasamy died due to the grievous injuries sustained. Thereafter, the claim petition

was filed by the wife and two daughters of the deceased person. The deceased at the time of the accident was aged 64 years and was doing agriculture in his own lands. Further, it is stated in the claim petition that he was holding the office of Secretary in a Milk Society. The Tribunal adjudicated the issues with reference to the documents and evidences. As far as the negligence is concerned, the Tribunal considered the FIR and the oral evidence of PW2 and accordingly, arrived a conclusion that the driver of the respondent/Transport Corporation bus is responsible for the accident. There is no contra evidence to establish the contentions in the FIR as well as the oral evidence of PW2. Thus, the Tribunal came to the conclusion that the Transport Corporation bus bearing Registration No.TN-30-N-1002 is responsible for the cause of the accident and the driver was driving the vehicle in a rash and negligent manner and he is liable for the negligence. Regarding the quantum of compensation, the Tribunal has fixed the monthly income of the deceased as Rs.6,500/- and applied 7 multiplier and accordingly, calculated the dependency compensation.

4. The learned counsel appearing on behalf of the appellants/claimants made a submission that the overall compensation granted by the Tribunal is inadequate and not in accordance with the principles laid down by this Court. The total compensation of Rs.5,20,836/- granted by the Tribunal is on the lesser side. The Tribunal has not considered the fact that the deceased was self-employed and further, he was holding the post of secretary in a Milk Society. Without considering all these aspects, lesser compensation was granted.

5. The learned counsel appearing on behalf of the respondent/Transport Corporation disputed the contention by stating that the deceased was aged 64 years and in the absence of any proof for the income, the Tribunal is right in fixing the compensation and therefore, the appeal is liable to be dismissed.

6. Considering the facts and circumstances of the case, this Court is of the opinion that the factum regarding the accident was established. The negligence on the part of the driver of the respondent/Transport Corporation bus was also established. Regarding the quantum of compensation, it is to be considered that the age of the deceased at the time of the accident was 64 years. The claimants have not produced any document to establish that the deceased was holding the office of Secretary in a Milk Society. This apart, they have not even produced the bank statement to prove the monthly income of the deceased. In the absence of any proof of document, the Tribunal has rightly arrived a conclusion that the notional monthly income of Rs.6,500/- has to be fixed. In the absence of the

income proof, it would be difficult for the Courts to arrive a conclusion. Regarding the monthly income, there must be considered reasonable needs and there must be logic in fixing the monthly notional income in such fatal cases. In the process of fixing the monthly income, the Tribunals are bound to consider the nature of the employment established. Minimum wages for the job as well as the location in which the job was being performed and other aspects of the matter are to be considered for fixing the monthly income of the deceased persons in the accident cases. It is not as if the Courts can fix the monthly income based on presumptions and assumptions, some logic and principles are to be adopted. For instance, in a case of coolie, the Court has to ascertain the fact that where the deceased was working and in that area, what would be the minimum wages for a coolie. In the present case, the claimants have not produced any proof for the income. Even, any bank statements have not been produced. Under those circumstances, the Tribunal has not committed any error and therefore, the monthly income fixed by the Tribunal is just and proper. This apart, the deceased was aged 64 years and the children are grown up. Therefore, this Court is not inclined to interfere with compensation awarded by the Tribunal.

7. Accordingly, the judgment and decree dated 21.12.2018 passed in M.C..O.P No.851 of 2007, on the file of the Motor Accident Claims Tribunal/Special District Court, Salem stands confirmed and this Civil Miscellaneous Appeal stands dismissed. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1.The Motor Accident Claims Tribunal,
Special District Judge Court,
II Additional District Judge (F/Incharge), Salem.

Copy to:

The Section Officer, VR Section, High Court, Madras.

+1cc to Mr.D.Raghu, Advocate SR.No. 30836

C.M.A.No.2523 of 2019

A.SK(29.12.2020)