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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2020

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THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

C.M.A.No. 1774 of 2020
and
C.M.P. No. 13053 of 2020

The Managing Director,
Tamil Nadu State Transport Corporation,
No.3/137, Salamedu,
Vazhuthareddy,
Villupuram.

... Appellant /Respondent

Vs.

1. E.Haja Mohideen,
S/o. Eibrahim,
Gunamangalam,
Karamanikuppam,
Cuddalore Taluk.

2. H.Nazira Begum,
W/o. Haja Mohideen,
Gunamangalam,
Karamanikuppam,
Cuddalore Taluk.

... Respondents/Petitioner

PRAYER:- Civil Miscellaneous Appeal preferred under Section 173 of Motor Vehicles Act against the judgment and decree in M.C.O.P. No.1879 of 2017, dated 13.12.2019 on the file of the Motor Accident Claims Tribunal, Special Sub-Court (FAC), Cuddalore.

For Appellant : Mr.C.S.K.Sathish

J U D G M E N T

The Transport Corporation aggrieved with the award passed by the Motor Accident Claims Tribunal has filed this appeal.

2. The case of respondents/claimants is that it is a case of fatal accident. The deceased was aged 20 years old mechanic, on 27.12.2016 at about 09.15 a.m., while he was riding a motorcycle bearing Regn. No.PY-01-CK-0124, in extreme left hand side of Panruti - Cuddalore main road, near Nellikuppam, a bus



bearing Regn. No.TN-32-n-3240 owned by the State Transport Corporation came in the same direction at a very high speed in a rash and negligent manner and hit from behind the two wheeler, in which the deceased sustained fatal injuries and died on the spot. Claiming that the accident has been occurred due to the negligent driving of driver of a bus belong to State Transport Corporation, the claim petition has been filed by the respondents claiming compensation of Rs.25 lakhs.

3. The same was contested by the Transport Corporation before the Tribunal on the ground that the accident was taken place due to the negligent driving of deceased and not on the negligent driving of driver of Transport Corporation bus. That apart, on the date of accident, the deceased did not possess valid driving license and the compensation fixed by the Tribunal is exorbitant and highly excessive.

4. Before the Tribunal, the respondents/claimants have examined 2 witnesses, out of which, an eye-witness to the occurrence was examine as P.W.2 and marked as many as 6 documents. On the side of appellant, no witness was examined and no document was marked.

5. The Tribunal, after considering the materials available on record, has held that the accident has been taken place due to negligent driving of corporation bus. So far as quantum of compensation is concerned, the Tribunal has fixed the notional monthly income of deceased at Rs.8000/- and adding 40% towards future prospects and deceased being a bachelor, 50% towards personal expenses, the Tribunal has arrived the loss of dependency at Rs.12,09,600/-. Apart from that, the Tribunal has awarded a sum of Rs.40,000/- towards filial consortium and Rs.15,000/- each towards funeral expenses and loss of estate. Thus, the Tribunal has totally awarded a sum of Rs.12,79,600/-. Aggrieved over the same, the Transport Corporation is before this court by way of filing this appeal.

6. Mr. C.S.K.Sathish, learned counsel appearing for appellant Transport Corporation would contend that the accident was taken place due to the negligent driving of the two wheeler. That apart, he did not possess driving license. Hence, the negligence is to be fixed on the deceased. The learned counsel has also stated that the deceased was 20 years old and the monthly income fixed by the Tribunal is highly excessive.

7. I have considered the submissions made by the learned counsel appearing for appellant and perused the records.

8. So far as negligence is concerned, considering the manner of accident that the transport corporation bus came in



the same direction and dashed the deceased two wheeler from behind, in which, he has sustained fatal injuries. To prove the negligence, the claimants have examined the eye-witness to the occurrence as P.W.2, and he has also categorically stated that the bus came in a high speed and dashed against the two wheeler. On the side of appellant, not even a driver of the bus was examined to prove the negligence. Considering the same, the Tribunal has held that the accident was taken place due to the rash and negligent driving of driver of Transport Corporation bus. Now, it is contended that the deceased did not possess valid driving license, non-possession of driving license itself is not a ground to hold that the deceased was negligent, it is for the transport corporation to prove that the negligence was on the part of deceased as per the dictum laid down by the Hon'ble Supreme Court of India, in the case of Sudhir Kumar Rana vs. Surendar Singh and others reported in 2008 (12) SCC 436, the appellant transport corporation failed to prove the same with acceptable evidence, hence, it is liable to pay the compensation. Hence, I find no error in the order passed by the Tribunal fixing the negligence on the part of the driver of the Transport Corporation. So far as quantum of compensation is concerned, considering the age of deceased as 20 years, he is a mechanic and the accident has been taken place in the year 2016, the Tribunal has rightly fixed monthly income of deceased at Rs.8,000/-, added 40% towards future prospects, after deducting 50% towards personal expenses, and applying the multiplier of 18, arrived the loss of dependency at Rs.12,09,600/- and the same is not excessive. So far as other heads are concerned, the Tribunal has rightly awarded the compensation. Therefore, I find no error in the order passed by the Tribunal.

9. In the result, the Civil Miscellaneous Appeal filed by the Insurance Company is dismissed. The award of the Tribunal is upheld. The entire compensation as calculated by the Tribunal, shall be deposited by the appellant/Insurance Company after deducting the amount, if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, it is for the claimants to move a petition before the Tribunal for withdrawing the said amount as apportioned by the Tribunal. No costs. Consequently, Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar

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To

The Motor Accidents Claims Tribunal,
Special Sub-Court (FAC),
Cuddalore.

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SR II(CO)
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