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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.12.2020

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THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

C.M.A.No.1808 of 2020

and

CMP No.13305 of 2020

The Managing Director,
Tamilnadu State Transport Corporation Ltd.,
Villupuram Division,
Kancheepuram Region-631 502

...Appellant

Vs.

1. Lakshmi Priya

2. Minor K.Vijay

3. Minor K.Monika

...Respondents

Respondents 2 & 3 (Minors)
represented by their
Mother Natural Guardian - 1st Respondent

PRAYER:- Civil Miscellaneous Appeal preferred under Section 173 of Motor Vehicles Act, 1988, to set aside the judgment and decree dated 04.12.2019 passed in MCOP No.126 of 2017 on the file of the Motor Accidents Claims Tribunal-I, (Special District Court), Tiruvallur.

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

J U D G M E N T

Feeling aggrieved with the award passed by the tribunal, the appellant/Transport Corporation, is before this Court with this appeal.

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

On 23.12.2016, at about 10.00 p.m., the deceased was



riding his two wheeler, from Tiruvallur to Manavala Nagar, and while turned right near a petrol pump, a Transport Corporation bus bearing Registration lNo.TN 21-N-1757, came in a rash and negligent manner and dashed the motorcycle of the deceased, in which, the deceased sustained multiple injuries and he was initially admitted in the Government Hospital, Tiruvallur, thereafter, he was shifted to Government General Hospital, Chennai, for further treatment and died on the next day. At the time of accident, the deceased was 37 years old and he was working as a painter and earning a sum of Rs.24,000/- per month. Hence, claiming compensation of Rs.26 lakhs, claim petition has been filed.

3. The respondent/Transport Corporation contested the claim petition on the ground that the accident has taken place due to the rash and negligent act of the deceased. The deceased without noticing the bus suddenly turned the motorcycle towards a petrol pump and the entire negligence was on the part of the deceased. Hence, the respondent is not liable to pay the compensation. The Transport Corporation also disputed the monthly income of the deceased.

4. In order to prove the case, before the Tribunal, the claimant examined herself as P.W.1 and another eye-witnesses to the occurrence as P.W.2 and marked as many as 10 exhibits. On the side of the respondent, the driver of the TNSTC bus was examined as RW1. No documentary evidence has been adduced on the side of the respondent.

5. The Tribunal, after considering the materials, including the evidence of the eye-witness, has held that the accident had taken place due to the rash and negligent driving of the driver of the bus and fixed the negligence on the driver of the bus. In respect of quantum of compensation, the tribunal fixed the monthly income at Rs.9000/- and adding 40% towards future prospects and deducting 1/3 towards personal expenses, fixed the notional income of the deceased at Rs.8400/- and applying multiplier of 15, arrived at a loss of dependency at Rs.15,12,000/-. In respect of other heads, the Tribunal has awarded a sum of Rs.40,000/- towards loss of consortium, a sum of Rs.15,000/- towards funeral expenses, a sum of Rs.15,000/- towards loss of estate and Rs.1,00,000/- towards love and affection and in total a sum of Rs.16,82,000/- was awarded by the Tribunal towards compensation. Now, aggrieved over the same, the Transport Corporation is before this Court with this appeal.

6. The learned counsel appearing for the appellant would submit that the accident has taken place only due to the negligence of the deceased. While riding the two wheeler in the



main road, the deceased suddenly turned to his right without any indication, and bus which came in the same direction could not stop the bus, hit the motor cycle. It is a clear case of negligence on the part of the deceased. However, the Tribunal, based on the First Information Report, which was given by the claimant, fixed the negligence on the Transport Corporation. That Apart, the Tribunal fixed the monthly income of the deceased at Rs.9000/-, which is also an higher side. Towards love and affection, the Tribunal has awarded a sum of Rupees one lakh, instead of Rs.80,000/- as per the guidelines issued by the Hon'ble Supreme Court.

7. I have considered the submission made by the learned counsel for the petitioner and perused the materials available on records carefully.

8. So far as negligence is concerned, an eye-witness to the occurrence was examined as P.W.2. He has clearly stated that while the deceased was riding the two wheeler, he turned towards the petrol pump and the bus came in a rash and negligent manner dashed him, in which, he sustained serious injuries. That apart, a First Information Report is also immediately registered against the driver of the bus. From the evidence of RW1, driver of the bus, it could be seen that a disciplinary proceedings has been taken against him and he was sent for training. Considering all the above materials, the Tribunal has rightly held that the accident has taken place only due to the rash and negligent driving of the driver of the bus.

9. So far as the quantum of compensation is concerned, admittedly, the deceased was a painter, skilled labour and the accident has taken place in the year 2016 and hence, the Tribunal rightly fixed the monthly income of the deceased at Rs.9000/- and ordered 40% towards future prospects and since there are 3 claimants, deducted 1/3 towards personal expenses and arrived at the loss of dependency at Rs.15,12,000/-.

10. So far as love and affection is concerned, the Tribunal granted a sum of Rs.50,000/- each to claimants/2 and 3, minor children, totalling a sum of Rs.1 lakh. The learned counsel for the petitioner would submit that as per the judgment of the Hon'ble Supreme Court in the case of United Insurance Company / vs/ Satwinder Kaur and others in C.A.Nos.2705 & 2706 of 2020, dated 30.06.2020, the minor children are entitled only for Rs.40,000/-each for parental consortium. However, considering the fact that the claimants 2 and 3 are aged about 16 and 12 years and lost their father, the Tribunal awarded a sum of Rupees One lakh, and the difference is also meager amount, and on this ground, this Court is not inclined to interfere with the same, and considering the circumstances,, this Court finds no



merit in the appeal.

9. In the result, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

mrp

To:

The Motor Accidents Claims Tribunal-I,
(Special District Court),
Tiruvallur.

C.M.A.No.1808 of 2020

GMI (CO)
RGA (20/09/2021)