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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.11.2020

CORAM

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

C.M.A. No.1861 of 2017

Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Coimbatore Division II,
Chennimalai Road,
Erode - 1.

... Appellant/Respondent

Vs

1.C.Saradha
2.Minor. Poornima
3.Minor. Gowtham

(Minors are represented by Guardian/
Mother Saradha)

4.R.Vellingiri

... Respondents 1 to 4 /
Petitioners 1 to 4

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 15.03.2011 passed in M.C.O.P. No.1391 of 2008 by the learned Principal Sub Judge, Motor Accident Claims Tribunal, Tirupur.

For Appellant : Mr.S.S.Swaminathan

For Respondents : No Appearance

JUDGMENT

This appeal is preferred by the appellant as against the award in M.C.O.P. No.1391 of 2008 on the file of Principal Sub Court / Motor Accident Claims Tribunal, Tiruppur.

2. The respondents in this appeal are the claimants in the suit. The respondents are the wife and children of the deceased. The facts that are necessary for the disposal of this appeal are as follows:



On 01.07.2008, the vehicle belonged to the appellant dashed against the husband of the first respondent who travelled in a two wheeler. As a result of the accident, the husband of the first respondent by name Chandran sustained grievous injuries and died. Stating that the deceased was the sole bread winner of the family of the respondent and that he was earning a sum of Rs.6,000/- per month, the claimants filed a claim petition before the Principal Sub Court / Motor Accident Claims Tribunal, Tiruppur, in M.C.O.P. No.1391 of 2008, claiming a sum of Rs.9,00,000/- as compensation. The deceased was employed as a driver at the time of accident. The Tribunal in one place accepted the income of the deceased as Rs.6,000/- per month. Though the claimants contented before the Tribunal that the deceased was earning a sum of Rs.6,000/- per month, the Tribunal has taken only a sum of Rs.4,500/- as the monthly income of the deceased. After deducting 1/4th, the Tribunal calculated the annual income of the deceased as Rs.54,000/-. Since it was admitted that the deceased was aged 26 at the time of accident, the Tribunal adopted 17 as multiplier and determined loss of income as Rs.6,88,500/-. The Tribunal awarded further a sum of Rs.10,000/- towards loss of consortium and another sum of Rs.40,000/- towards loss of love and affection. After awarding an additional sum of Rs.6,000/- towards transport and funeral expenses, a sum of Rs.7,44,500/- was awarded in favour of the claimants / respondents.

3. This Court carefully considered the pleadings and evidence adduced by the parties before the Tribunal and the findings of the Tribunal. The Tribunal has taken only a sum of Rs.4,500/- as monthly income of the deceased who was employed as driver at the time of accident. Though a sum of Rs.6,000/- would be reasonable, the Tribunal has taken only Rs.4,500/- as monthly income and awarded compensation on the basis of notional income. This Court is of the view that the Tribunal has reduced the income of the deceased unnecessarily while calculating the amount of compensation and the claimants are entitled more than the amount which was awarded by the Tribunal. The accident was occurred in the year 2004 and therefore, the claimants are entitled to compensation by calculating the monthly income as Rs.6,000/- apart from future prospects. Unfortunately, the claimants have not preferred any cross appeal.

4. Learned counsel appearing for the appellant insurance company submitted that the appellant has pleaded contributory negligence on the ground that the accident was caused as the deceased was driving his two wheeler along with two other persons and that he did not wear helmet. It is also to be noted that the accident was registered by showing the driver of the appellant responsible for the accident. Considering the evidence



adduced on behalf of claimants, the Tribunal found that the accident was caused by the driver of appellant. This Court do not find any infirmity in the finding.

5. Despite notice being served on the respondents and their names have been printed in the cause list, the respondents have neither appeared nor represented through counsel. Hence, this Court is not inclined to modify the award of the Tribunal in favour of the claimants upon consideration of other factors.

6. The Civil Miscellaneous Appeal fails and the award of the Principal Sub Judge, Motor Accident Claims Tribunal in M.C.O.P. No.1391 of 2008, dated 15.03.2011, is confirmed. Accordingly, the Civil Miscellaneous Appeal is dismissed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

bkn

To

The Principal Sub Judge,
Motor Accident Claims Tribunal,
Tirupur.

Copy To

The Section Officer,
VR Section,
High Court, Chennai - 104.

+1cc to Mr.S.S.Swaminathan, Advocate, S.R.No.37306

C.M.A. No.1861 of 2017

PVS (CO)
RLP (01/09/2021)