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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.02.2021

CORAM:

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

CMA. NO.3813 OF 2005

The Managing Director,
Tamil Nadu State Transport Corporation
Division -II, Bharathipuram,
Dharmapuri - 5.

... Appellant/Respondent

..VS..

1. Manga @ Mangai
W/o. Savalpattian @ Lakshman
2.Angappan
S/o. Savalpattian @ Lakshman
3. Palanisamy
Savalpattian @ Lakshman

... Respondents/Respondents

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 27.04.2005 made in M.C.O.P.No.365 of 2003, on the file of the Motor Accidents Claims Tribunal, Sub Court, Krishnagiri.

For Appellant : Mr.D.Raghu

For Respondents : Mr.M.D.Abrar Abdulla

JUDGMENT

Dissatisfied with the judgment and decree, dated 27.04.2005, passed by the tribunal awarding compensation of Rs.3,80,000/- along with interest at the rate of 9% per annum, the Appellant/ Transport Corporation is before this Court to set aside the judgment and decree by the tribunal.



2. It is the case of the claimants/ Respondents herein that on 30.05.2002 at about 4.15 pm the deceased Savalpattiyan @ Lakshman was walking on mud portion of Dharmapuri to Tirupattur Main Road to go to his residence. At that time a Transport Corporation Bus bearing Reg.No TN29-0946 came from Tirupattur side at a high speed without sounding horn, driven by its driver in a rash and negligent manner and dashed against the deceased. As a result of which, the deceased sustained greivous bleeding injuries and immediately taken to Govt Head Quarters Hospital, Dharmapuri, where he declared died. The claimants/ respondents being legal heirs of the deceased, filed petition before the tribunal, claiming compensation of Rs.4,00,000/- for the death of the deceased. After analyzing both oral and documentary evidences, the Tribunal has awarded Rs.3,80,000/- as total compensation along with interest at the rate of 9% p.a from the date of petition till realization.

3. The learned counsel appearing for the appellant/Transport Corporation has submitted that the tribunal has erred in holding that the driver of the appellant's bus was rash and negligent and was responsible for the accident. The tribunal erred in presuming the age of the deceased as 45 years without any proof and also erred in fixing monthly income at Rs.2000/- per month. The learned counsel for the appellant further submitted that the compensation awarded towards Loss of income at Rs.3,00,000/-by adopting multiplier 15 is excessive. Likewise the compensation granted under other heads are also excessive without any proof and liable to be set aside.

4. On the other hand, the learned counsel appearing for the respondents/claimants contented that the tribunal after careful examination of documents, fixed the monthly income and age of the deceased and granted reasonable compensation for the death of the deceased as per the settled principles of law laid down by the Hon'ble Supreme Court, hence the quantum arrived at by the Tribunal does not require any interference by this Court.

5. Heard the learned counsel appearing for the appellant/ Transport Corporation and the learned counsel appearing for the respondents/claimants and perused the materials available on record.



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6. Before the Tribunal, the 1st claimant/1st respondent herein was examined herself as P.W.1 and PW2 was examined as eyewitness and marked two Exhibits P1 & P2 marked on the side of the respondents/claimants, whereas RW1/ Conductor the appellant transport corporation bus was examined and no witness was examined on the side of the appellant/transport corporation.

7. From a perusal of the records, it is seen that one Perumal Gounder was examined as eyewitness/PW2, he deposed that the the deceased was walking on the left side of the road, at that time a Transport Corporation Bus bearing Reg.No TN29-0946 came in a rash and negligent manner and dashed against the deceased. Immediately the deceased fell down and taken to the Government Hospital. Further on the side of the Transport Corporation, the conductor of the alleged bus was examined, he deposed that at that time the driver of the bus drove the same at a low speed and careful manner, therefore, the negligence was on the part of the deceased who tried to crossed the bus suddenly. If we assume that the evidence of the RW1/conductor is correct, then the driver of the bus could have easily stopped the bus and avoided the accident. Therefore, it is clear that the evidence of RW1 fails to disprove the negligence on the part of the driver of the appellant transport corporation bus. The tribunal has also rightly observed the said fact and fixed the liability on the part of the driver of the appellant/transport corporation bus. This Court finds no error on this aspect and confirms the same.

8. Insofar as the quantum arrived at by the tribunal, as per Ex.P2/Postmortem report, the age of the deceased was 45 years, PW1/wife of the deceased has also deposed that her husband/deceased was aged 45 years at the time of the accident. Therefore, there is no dispute in fixing the age of the deceased as 45 years. But the tribunal has adopted multiplier 15, which is wrong as per the Sarala Verma's Case, therefore this Court without modifying the monthly income and deduction towards personal and living expenses fixed by the tribunal, is inclined to calculate the loss of income by adopting multiplier 14, which comes to Rs.2,80,000/-. The tribunal has awarded only Rs.10000/- towards 'Loss of Love and Affection'. This Court by considering the claimants, who are the wife and the children of the deceased, is inclined to enhance the compensation under the said head by granting Rs.30,000/- (Rs.10,000/- each). The sum



awarded at Rs. 50,000/- to the 1st claimant/wife of the deceased towards 'Loss of Consortium' and Rs.10,000/- each towards 'Funeral Expenses' and 'Transport Expenses' respectively are reasonable and the same are confirmed. The total modified compensation comes to Rs.3,80,000/-.

9. In fine, this Court, without changing the total amount of compensation, confirms the compensation granted by the tribunal as modified above. With regard to the rate of interest, the tribunal has awarded interest at 9% per annum, which is not inconsonance with the principles of law laid down by the Hon'ble Supreme Court, therefore, the rate of interest is modified at 7% per annum. The claimants/respondents herein are entitled interest only at 7% per annum for the compensation granted by the tribunal.

10. It is represented by the learned counsel for the appellant/transport corporation that the entire award amount has been deposited before the tribunal. In view of the same, the appellant/transport corporation is permitted to withdraw the remaining compensation amount as per the modified rate of interest by this Court, by filing appropriate application before the tribunal. The claimants/respondents are also entitled to withdraw the compensation amount only as per the rate of interest fixed by this Court.

11. With the above, the Civil Miscellaneous Appeal is partly allowed. No costs.

Sd/-

Assistant Registrar(CCC)

// True Copy //

Sub Assistant Registrar

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To

1. The Sub Court,
(Motor Accidents Claims Tribunal)
Krishnagiri.



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

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+1cc to Mr.D.Raghu, Advocate, S.R.No.7833

CMA.No.3813 of 2005

SPD(CO)

RLP(08/10/2021)