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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.03.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No.569 of 2021
and C.M.P.No.3535 of 2021

TNSTC, Villupuram,
Rep. through the Managing Director. .. Appellant/Respondent

Vs.

1.Nirmala

2.Minor Gokulnath

3.Minor Gurunath .. Respondents/Claimants

(Minors rep. By their mother, 1st respondent)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 05.03.2020, made in M.C.O.P. No.199 of 2017, on the file of the Additional District Court, (Motor Accident Claims Tribunal), Vellore @ Ranipet.

For Appellant : Mr.K.J.Sivakumar

For Respondents: Mr.M.Sivakumar

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant-Transport Corporation challenging the quantum of compensation granted by the Tribunal in the award dated 05.03.2020, made in M.C.O.P. No.199 of 2017, on the file of the Additional District Court, (Motor Accident Claims Tribunal), Vellore @ Ranipet.

2.By consent of the learned counsel appearing for the appellant as well as the respondent, the appeal is taken up for final disposal at the admission stage itself.

3.The appellant is the respondent in M.C.O.P. No.199 of 2017, on the file of the Additional District Court, (Motor Accident Claims Tribunal), Vellore @ Ranipet. The



respondents/claimants filed the said claim petition, claiming a sum of Rs.50,00,000/- as compensation for the death of one Madhavan, who died in the accident that took place on 13.07.2017.

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4. According to the respondents, on the date of accident, when the deceased Madhavan was riding a Motorcycle bearing Registration No.TN-25-AY-2016 on Arcot to Arani Road, near Tajpura Koot Road, opposite to Sivan Kovil, the driver of the Bus bearing Registration No.TN-23-N-1857 belonging to the appellant-Transport Corporation who was coming from opposite direction, drove the same in a rash and negligent manner and hit against the Motorcycle and caused the accident. In the accident, the deceased Madhavan sustained fatal injuries. The accident occurred only due to rash and negligent driving by the driver of the Bus belonging to the appellant-Transport Corporation. Hence, the respondents filed the claim petition claiming compensation against the appellant as owner of the said vehicle.

5. The appellant/Transport Corporation filed counter statement and denied all the averments made by the respondents. According to the appellant, on the date of accident, the Bus belonging to them was plying from Vilapakkam to Vellore in a moderate speed by observing traffic rules. When the Bus was nearing Tajpura Koot Road, the rider of the Motorcycle, under consumption of alcohol, rode the vehicle in opposite direction, lost control and hit the Bus belonging to the appellant and caused the accident. The accident did not occur due to negligence of the driver of the Bus and hence, the appellant is not liable to pay any compensation to the respondents. The claim petition is bad for non-joinder of owner and insurer of the Motorcycle drove by the deceased. At the time of accident, the deceased rode the Motorcycle without wearing helmet and without possessing valid driving license. The appellant has also denied the age, avocation and income of the deceased. In any event, the total compensation claimed by the respondents is excessive and prayed for dismissal of the claim petition.

6. Before the Tribunal, the 1st respondent examined herself as P.W.1, examined one Gunasekaran, eye-witness to the accident as P.W.2 and marked 6 documents as Exs.P1 to P6. The appellant/Transport Corporation examined one S.Gajendran, driver of the Bus as R.W.1, but did not mark any document.

7. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by driver of the Bus belonging to the appellant-Transport Corporation and directed the appellant to pay a sum of Rs.29,59,800/- as compensation to the respondents.



8.To set aside the said award dated 05.03.2020, made in M.C.O.P. No.199 of 2017, the appellant - Transport Corporation has come out with the present appeal.

9.The learned counsel appearing for the appellant/Transport Corporation contended that the Tribunal failed to note that the accident has occurred only due to rash and negligent riding of Motorcycle by the deceased. The Tribunal erred in fixing entire negligence on the driver of the Bus, merely relying on the FIR registered against the driver of the Bus. The learned counsel further contended that the Tribunal failed to note that no valid document was filed by the respondents to prove the age, avocation and income of the deceased. The Tribunal erred in fixing a sum of Rs.12,000/- as monthly income of the deceased Madhavan, which is excessive. The amounts awarded by the Tribunal under different heads are excessive and prayed for setting aside the award of the Tribunal.

10.Per contra, the learned counsel appearing for the respondents contended that the Tribunal considering the evidence of P.W.1, P.W.2 - eye witness and FIR registered against the driver of the Bus, rightly fixed negligence on the driver of the Bus and directed the appellant to pay compensation. At the time of accident, the deceased was aged 28 years, working as a Welder and was earning a sum of Rs.20,000/- per month. The Tribunal has fixed only a sum of Rs.12,000/- per month as notional income. The amounts granted by the Tribunal under other heads are not excessive and prayed for dismissal of the appeal.

11.Heard the learned counsel appearing for the appellant/Transport Corporation as well as the respondents and perused the entire materials available on record.

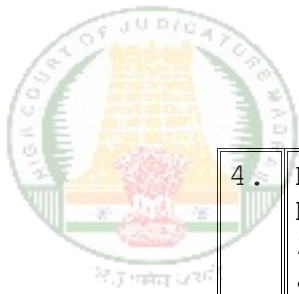
12.It is the case of the respondents that while the deceased Madhavan was riding his Motorcycle, the driver of the Bus belonging to the appellant/Transport Corporation drove the same in a rash and negligent manner, hit against the motorcycle rode by the deceased and caused the accident. To substantiate this contention, the 1st respondent, wife of the deceased Madhavan, examined herself as P.W.1, eye-witness to the accident was examined as P.W.2, who deposed about the manner of the accident and marked F.I.R. as Ex.P1, which was registered against the driver of the Bus. On the other hand, it is the contention of the appellant/Transport Corporation that while the Bus belonging to them was driven carefully, the deceased/rider of the Motorcycle, in an inebriated condition, drove the vehicle in a rash and negligent manner in opposite direction and hit against the Bus and caused the accident. To prove their case, the appellant examined the driver of the Bus as R.W.1. The appellant has not examined any independent witness to prove their



contention. R.W.1, the driver of the Bus is an interested witness. The Tribunal considering the evidence of P.W.2, contents of Ex.P1/F.I.R and failure on the part of the appellant to examine any independent eye-witness, held that the accident has occurred only due to rash and negligent driving by the driver of the Bus belonging to the appellant/Transport Corporation and directed the appellant to pay the compensation to the respondents. There is no error in the said finding of the Tribunal warranting interference by this Court.

13.As far as quantum of compensation is concerned, it is the case of the respondents that the deceased Madhavan was working as a Welder and was earning a sum of Rs.20,000/- per month at the time of accident. The respondents failed to prove the same. In the absence of any material evidence to prove the income of the deceased, the Tribunal fixed a sum of Rs.12,000/- per month as notional income of the deceased. Considering the year of accident and nature of work done by the deceased, the monthly income fixed by the Tribunal is not excessive. The Tribunal has excessively awarded a sum of Rs.2,00,000/- towards loss of love and affection to the respondents 2 and 3. Hence the same is liable to be reduced and the respondents 2 and 3 who are the minor children of the deceased are entitled to only a sum of Rs.40,000/- each towards loss of love and affection. In addition to granting loss of love and affection, the Tribunal has erroneously awarded a sum of Rs.4,00,000/- towards maintenance of the respondents 2 and 3 till they attain majority. The same is liable to be set aside and is hereby set aside. The amounts granted by the Tribunal under other heads are just and reasonable and hence, the same are confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Transportation	5,000/-	5,000/-	Confirmed
2.	Loss of consortium to 1 st respondent	40,000/-	40,000/-	Confirmed
3.	Loss of love and affection to respondents 2 and 3	2,00,000/-	80,000/-	Reduced



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4.	Maintenance of Minor respondents 2 and 3 till they attain majority	4,00,000/-	-	Set aside
5.	Loss of dependency	22,84,800/-	22,84,800/-	Confirmed
6.	Loss of estate	15,000/-	15,000/-	Confirmed
7.	Funeral expenses	15,000/-	15,000/-	Confirmed
	Total	29,59,800/-	24,39,800/-	Reduced by Rs.5,20,000/-

14. In the result, this Civil Miscellaneous Appeal is partly allowed and the amount awarded by the Tribunal at Rs.29,59,800/- is modified to Rs.24,39,800/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant-Transport Corporation is directed to deposit the award amount, now determined by this Court, along with interest and costs, within a period of twelve weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P. No.199 of 2017. On such deposit, the 1st respondent is permitted to withdraw her share of the award amount, now determined by this Court, along with proportionate interest and costs, as per the ratio of apportionment fixed by the Tribunal, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal. The shares of the minor respondents 2 and 3 are directed to be deposited in any one of the Nationalized Bank, till the minors attain majority. The 1st respondent, mother of the minor respondents 2 and 3 is permitted to withdraw the accrued interest, once in three months for the welfare of the minor respondents 2 and 3. The appellant-Transport Corporation is permitted to withdraw the excess amount, lying in the deposit to the credit of M.C.O.P. No.199 of 2017, if any already deposited by them. It is made clear that if the respondents have already withdrawn the award amount, the appellant-Transport Corporation is not entitled to recover the same from the respondents. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(I)

//True Copy//

Sub Assistant Registrar

gsa



To

1.The Additional District Judge,
(Motor Accident Claims Tribunal),
Vellore @ Ranipet.

2.The Section Officer,
V.R Section,
High Court, Madras.

+1cc to Mr.K.J.Siva kumar, Advocate, S.R.No.12406

+1cc to Mr.M.Siva kumar, Advocate, S.R.No.12447

C.M.A. No.569 of 2021

RSV(CO)
CB(27/09/2021)