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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.08.2021

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THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

C.M.A.NO.1620 OF 2021

AND

C.M.P.NO.8539 OF 2021

The Managing Director,
M/s.Tamil Nadu State Transport Corporation,
Railway Station New Road,
Kumbakonam Town & Munsif.

... Appellant/Petitioner

vs.

1. Narmadha
2. Minor Jesina Shri
(Minor rep by her mother Narmadha)
3. Mathiazhagan
4. Jeyanthi

... Respondents/
Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 13.12.2019 made in M.C.O.P.No.113 of 2017 on the file of the Motor Accident Claims Tribunal, Subordinate Judge, Mannarkudi.

For Appellant : Mr.D.Venkatachalam

For Respondents : No appearance

J U D G M E N T

This Appeal has been filed by the Transport Corporation challenging the Award dated 13.12.2019 passed by the Motor Accident Claims Tribunal, The Subordinate Judge, Mannarkudi in M.C.O.P.No.113 of 2017, directing the Appellant/Transport Corporation to pay the Claimants a sum of Rs.13,65,200/- as compensation for the death of the deceased, who succumbed to the injuries sustained in an accident which occurred on 26.03.2017 involving the bus owned by the Appellant/Transport Corporation. Respondents/Claimants are the dependants of the deceased viz., Wife, daughter and parents.



2. Before the Tribunal, the Respondents/Claimants claimed a sum of Rs.25,00,000/- as compensation for the death of the deceased. On the side of the Respondents/Claimants, P.W.1 and P.W.2 were examined as witnesses and Exs.P1 to P4 were marked before the Tribunal. On the side of the Appellant/Transport Corporation, R.W.1 was examined as witness and no Exhibit was marked.

3. On consideration of the oral and documentary evidence available on record, the Tribunal has awarded a sum of Rs.13,65,200/- as compensation to the Respondents/Claimants. Details of the compensation awarded by the Tribunal under the impugned Award, are as follows :

Heads	Amount awarded by the Tribunal (Rs.)
Loss of Income of the deceased	12,85,200/-
Loss of consortium	40,000/-
Loss of love and affection (daughter & mother)	15,000/-
Transport expenses	10,000/-
Funeral expenses	15,000/-
Total	Rs.13,65,200/-

4. The Appellant has challenged the impugned award on the ground that in the F.I.R. (Ex.P1), it has been mentioned that three persons were travelling in the motorcycle of the deceased, which is a violation of the Statute. The learned Trial judge ought not to have fixed the monthly income of the deceased at Rs.6,000/- without any proof which is on higher side. The overall compensation awarded by the Tribunal is on the higher side and the same needs to be reduced.

5. Heard the learned counsel appearing on both sides and perused the material documents available on record.

6. It is not in dispute that three persons, who travelled in a motor cycle met with an accident. It was stated that the bus driver, due to the rash and negligent driving, caused the accident and two persons died on the spot and Jenifer/deceased died in the hospital. Even in the FIR, it has been stated that three persons travelled in a motor cycle. The only contention of the Appellant / Transport Corporation, is that three persons travelled in a motor cycle and two persons died on the spot and subsequently, the deceased died in the hospital. The Tribunal



had proceeded on the basis that no one was examined on the side of the Appellant Transport Corporation to foist the liability on the deceased and the Tribunal, upon perusing the Vehicle Inspection Report (Ex.P3), came to the conclusion that the accident had occurred purely on the fault of the Driver of the Appellant Transport Corporation.

7. I find that the order of the Tribunal is perfectly correct, but, at the same time, the observation of the Tribunal that there is no evidence on the side of the Corporation, may not be correct, as the Driver has been duly examined. Of course, his version has been disbelieved by the Tribunal. Though the Tribunal has awarded a compensation due to the death of the deceased, as there is a contributory negligence on the part of the deceased, the compensation is reduced by 10%. Though the father of the deceased is also a dependent, no amount has been apportioned to him. Accordingly, the amount awarded by the Tribunal is modified and apportioned as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of Income of the deceased	12,85,200/-	11,56,680/-	Reduced (after deduction of 10%)
2.	Loss of consortium	40,000/-	40,000/-	Confirmed
3.	Loss of love and affection (daughter & mother of the deceased)	15,000/-	1,20,000/-	Enhanced (father of the deceased included)
4.	Transport expenses	10,000/-	10,000/-	Confirmed
5.	Funeral expenses	15,000/-	15,000/-	Confirmed
	Total	Rs.13,65,200/-	Rs.13,41,680/-	-

8. Taking note of the age of the minor daughter, this Court is not inclined to interfere with the amount awarded by the Tribunal, as the difference is only minimal and hence, the same is confirmed. The Appellant is directed to deposit the balance amount, if any, together with proportionate interest, within a period of two months from the date of receipt of a copy of this



order. Out of the compensation, the first respondent is entitled to a sum of Rs.5,00,200/-, the second respondent is entitled to a sum of Rs.6,65,000/- and the respondents 3 and 4 are entitled to a sum of Rs.1,00,000/- each. The Appellant/Transport Corporation is directed to deposit the Award amount determined by this Court along with interest and costs, less the amount already deposited, if any, to the credit of M.C.O.P.No.113 of 2017 on the file of the Motor Accident Claims Tribunal, Subordinate Judge, Mannarkudi in M.C.O.P.No. 113 of 2017 on the file of the Motor Accidents Claims Tribunal, The Subordinate Judge, Mannarkudi, within a period of eight weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the Award amount directly to the Bank account of the Respondents/Claimants 1 to 4 through RTGS, within a period of two weeks thereafter. The share of the minor claimant is directed to be deposited in any one of the Nationalised Banks, till she attains majority and the mother of the minor viz., the First Respondent is permitted to withdraw the accrued interest once in three months purely for the welfare of the child.

9. In the result, this Civil Miscellaneous Appeal is disposed of. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

rsi

To:

1. The Motor accident Claims Tribunal,
The Subordinate Judge,
Mannarkudi.

+1cc to Mr.D.Venkatachalam, Advocate, S.R.No.39258

C.M.A.No.1620 of 2021

RR (CO)
PM/17/02/2022