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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No.3495 of 2019
and C.M.P. No.20492 of 2019
and Cross Objection No.4 of 2021

C.M.A. No.3495 of 2019

The Managing Director,
Tamil Nadu State Transport Corporation (VPM) Ltd.,
Villupuram. ... Appellant /Respondent

Vs.

1.Nithya

2.Minor Manigandan

3.Minor Iyyppan
(Minors R2 & R3 represented by their
mother & guardian, Nithya, R1)

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

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 07.04.2016, made in M.C.O.P. No.1206 of 2015, on the file of the II Judge, Small Causes Court, (Motor Accident Claims Tribunal), Chennai.

For Appellant : Mr.K.J.Sivakumar

For Respondents: M/s.R.Reena (For R1)

Cross Objection No.4 of 2021

1.Nithya

2.Minor Manigandan



3.Minor Iyyppan
(Minors R2 & R3 represented by their
mother & guardian, Nithya, R1)

4.Vijay

... Cross Objectors/Respondents

Vs.

The Managing Director,
Tamil Nadu State Transport Corporation (VPM) Ltd.,
Villupuram.

... Respondent/Appellant

Prayer: This Cross Objection is filed under Order XLI Rule 22 of C.P.C against the judgment and decree dated 07.04.2016, made in M.C.O.P. No.1206 of 2015, on the file of the II Judge, Small Causes Court, (Motor Accident Claims Tribunal), Chennai.

For Cross Objectors : M/s.R.Reena

For Respondents : Mr.K.J.Sivakumar

C O M M O N J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant-Transport Corporation against the award dated 07.04.2016, made in M.C.O.P. No.1206 of 2015, on the file of the II Small Causes Court, (Motor Accident Claims Tribunal), Chennai.

Cross Objection No.4 of 2021 has been filed against the award dated 07.04.2016, made in M.C.O.P. No.1206 of 2015, on the file of the II Small Causes Court, (Motor Accident Claims Tribunal), Chennai.

2.The appellant is the respondent in M.C.O.P. No.1206 of 2015, on the file of the II Small Causes Court, (Motor Accident Claims Tribunal), Chennai. The respondents filed the said claim petition, claiming a sum of Rs.50,00,000/- as compensation for the death of one Raji who died in the accident that took place on 07.07.2014.

3.The parties are referred to as per their rank in appeal for the sake of convenience.

4.According to the respondents, on the date of accident viz., 07.07.2014, while the deceased was riding the Motorcycle



bearing Registration No.TN-25-L-8537 on Kanamangalam to Polur Road, CC Road, from Thiruvannamalai to Vellore, driver of the Bus bearing Registration No.TN-23-N-2341 belonging to the appellant-Transport Corporation coming from Vellore to Thiruvannamalai drove the same in a rash and negligent manner and dashed on the Motorcycle rode by the deceased and caused the accident. In the accident, the deceased Raji succumbed to fatal injuries. Hence, the respondents filed the said claim petition against the appellant, owner of the offending vehicle.

5.The appellant-Transport Corporation filed counter statement and denied all the averments made by the respondents in the claim petition. According to the appellant, the driver of the Bus drove the same with due care and caution, observing traffic rules and he was not rash and negligent at the time of accident. The accident occurred only due to rash and negligent riding of Motorcycle by the deceased. The claim petition is bad for non-joinder of owner and insurer of the Motorcycle rode by the deceased. The respondents have to prove the age, avocation and income of the deceased to claim compensation. In any event, the total compensation claimed by the respondents is excessive and prayed for dismissal of the claim petition.

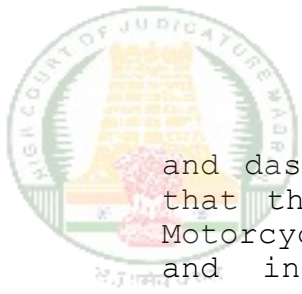
6.Before the Tribunal, the 1st respondent examined herself as P.W.1, examined eyewitness as P.W.2, employer of deceased as P.W.3 and marked 9 documents as Exs.P1 to P9. The appellant examined conductor of the Bus as R.W.1, but did not mark any document.

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 and directed the appellant-Transport Corporation to pay a sum of Rs.21,82,000/- as compensation to the respondents.

8.Challenging the liability fixed on them and questioning the quantum of compensation granted by the Tribunal in the award dated 07.04.2016, made in M.C.O.P. No.1206 of 2015, the appellant-Transport Corporation has come out with C.M.A.No.3495 of 2019.

9.Not being satisfied with the amounts awarded by the Tribunal, the respondents have filed Cross-Objection No.4 of 2021, seeking enhancement of compensation.

10.The learned counsel appearing for the appellant-Transport Corporation contended that the Tribunal failed to consider that the accident occurred only due to rash and negligent riding of Motorcycle by the deceased who came in the opposite direction



and dashed against their Bus. The Tribunal failed to consider that the FIR was registered against the deceased/rider of the Motorcycle. The respondents failed to prove the age, avocation and income of the deceased. In any event, the Tribunal erroneously awarded excessive amount towards loss of love and affection, loss of consortium and prayed for setting aside the award of the Tribunal.

11.The learned counsel appearing for the respondents/Cross Objectors contended that the accident has occurred only due to rash and negligent driving by the driver of the Bus belonging to the appellant-Transport Corporation. The respondents proved the same by examining eye witness as P.W.2. The Tribunal considering the fact that the appellant did not let in any contra evidence to disprove the evidence of P.W.2 and the evidence of R.W.1 - conductor, who was not the eye witness, held that the accident occurred only due to rash and negligent driving by driver of the Bus. The deceased was aged 30 years, working as Mason and was earning a sum of Rs.20,000/- per month, at the time of accident. The Tribunal fixed only a meagre sum of Rs.7,000/- per month as notional income of the deceased. The Tribunal failed to award any amount towards loss of parental consortium to the respondents 2 and 3, who are the children of the deceased. The Tribunal ought to have awarded compensation towards mental agony, loss of expectation of life, loss of cloth and articles and transportation. The total compensation awarded by the Tribunal is meagre and prayed for dismissal of the appeal filed by the appellant/Transport Corporation and for allowing the Cross Objection filed by him for enhancement of the compensation.

12.Heard the learned counsel appearing for the appellant as well as the respondents and perused the materials available on record.

13.It is the case of the respondents that while the deceased viz., Raji was riding his Motorcycle, the driver of the Bus belonging to the appellant-Transport Corporation drove the same in a rash and negligent manner and dashed on the Motorcycle rode by the deceased and caused the accident. In the accident, the deceased sustained grievous injuries and died. In support of their case, they examined the 1st respondent as P.W.1 and one Devendran, eye-witness was examined as P.W.2. On the other hand, it is the case of the appellant that accident occurred only due to rash and negligent riding by the deceased and FIR was registered only against the deceased. The appellant examined conductor of the Bus as R.W.1 to prove the negligence on the part of the deceased - rider of the Motorcycle. From the award of the Tribunal, it is seen that the person who lodged the



complaint based on which FIR was registered was not examined. R.W.1 - conductor of the offending Bus has admitted that he was sitting in the rear side of the Bus and he came to know of the accident only on hearing the sound. The appellant did not examine the driver of the Bus. The Tribunal considering the above materials, especially the evidence of P.W.2, accepted the evidence of P.W.2 and held that respondents have proved that accident occurred only due to negligence on the part of the driver of the Bus. There is no error in the said finding of the Tribunal, warranting interference by this Court.

14.As far as the quantum of compensation is concerned, the respondents claimed that the deceased was a Mason and was earning a sum of Rs.20,000/- per month. They failed to prove the same. In the absence of any materials, the Tribunal fixed a sum of Rs.7,000/- per month as notional income of the deceased and granted 50% enhancement towards future prospects. The deceased was aged 30 years at the time of accident. As per the judgment of the Hon'ble Apex Court reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and others], the respondents are entitled to only 40% enhancement. The accident is of the year 2014. Considering the date of accident and nature of work done by the deceased, a sum of Rs.9,000/- per month is fixed as notional income. There are four dependants of the deceased. Thus, deducting 1/4th towards personal expenses of the deceased and applying the multiplier '17', the amounts awarded by the Tribunal towards loss of dependency is modified to Rs.19,27,800/- {[Rs.9,000/- + Rs.3,600/- (40% of Rs.9,000/-)] x 12 x 17 x 3/4}. The Tribunal has excessively granted a sum of Rs.1,00,000/- for 1st respondent towards loss of consortium. In addition to granting compensation towards loss of consortium, the Tribunal has excessively awarded a sum of Rs.1,00,000/- each towards loss of love and affection to all the respondents. The 1st respondent, who is wife of the deceased, is only entitled to a sum of Rs.40,000/- towards loss of consortium. The respondents 2 & 3 who are the minor children and 4th respondent who is the mother of the deceased are each entitled to a sum of Rs.40,000/- towards loss of love and affection. The amounts granted by the Tribunal towards loss of estate and funeral expenses are also excessive. Hence, the same are reduced to Rs.15,000/- each. Thus, the compensation awarded by the Tribunal is modified as follows:



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S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of pecuniary benefits	16,06,500/-	19,27,800/-	Enhanced
2.	Loss of love and affection to respondents 2 to 4	4,00,000/-	1,20,000/-	Reduced
3.	Loss of consortium to 1 st respondent	1,00,000/-	40,000/-	Reduced
4.	Loss of estate	50,000/-	15,000/-	Reduced
5.	Funeral expenses	25,000/-	15,000/-	Reduced
	Total	21,81,500/- rounded off to 21,82,000/-	21,17,800/- rounded off to 21,18,000/-	Reduced by Rs.64,000/-

15. In the result, both the appeal and Cross-Objection are partly allowed. The amount awarded by the Tribunal at Rs.21,82,000/- is modified to Rs.21,18,000/- 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.1206 of 2015. On such deposit, the respondents 1 and 4 are permitted to withdraw their 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 credit of M.C.O.P. No.1206 of 2015, if the entire award amount has already been deposited by them. It is made clear that if the respondents have already withdrawn the entire 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/-
Deputy Registrar(CS)

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Sub Assistant Registrar

gsa
To

1.The II Judge,
Small Causes Court,
(Motor Accident Claims Tribunal),
Chennai.

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

+1cc to Mr.K.J.Sivakumar, Advocate Sr.5618

+1cc to Mrs.R.Reena, Advocate Sr.5515

C.M.A. No.3495 of 2019
and C,M.P. No.20492 of 2019
and Cross Objection No.4 of 2021

pvs[col]
srg 02/09/2021