IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.01.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3115 of 2019
and
C.M.P.No.17419 of 2019

The Managing Director
M/s.Tamil Nadu State Transport
Corporation Ltd. Kumbakonam
Karaikudi Region. ... Appellant/Respondent

Vs.

1.Shanmugavalli
2.Manikandan
3.Ragadevan ... Respondents/Petitioners

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 18.12.2018 made in M.C.O.P.No.195 of 2017 on the file of Motor Accident Claims Tribunal, Sub Court, Mannarkudi.

For Appellant : Mr.D.Venkatachalam

For Respondents : Mr.Vasanthanayagan for Mr.P.Vijayakumar

J U D G M E N T

This matter is heard through "Video-Conferencing".

This Civil Miscellaneous Appeal has been filed by the appellant/Transport Corporation challenging the award dated 18.12.2018 made in M.C.O.P.No.195 of 2017 on the file of Motor Accident Claims Tribunal, Sub Court, Mannarkudi.

2.The appellant/Transport Corporation is respondent in M.C.O.P.No.195 of 2017 on the file of Motor Accident Claims Tribunal, Sub Court, Mannarkudi. The respondents filed the said claim petition claiming a sum of Rs.25,00,000/- as compensation for the death of one P.Selvam, who died in the accident that took place on 16.06.2017.

3.According to the respondents, on the date of accident, i.e., on 16.06.2017 at about 16.45 p.m., while the deceased Selvam and his friend Sankaravadivelu were travelling in a Toyota Innova car, which was driven by one Vijayakumar, brother of Sankaravadivelu, after attending E.C. Court in Pudukottai and were returning to Tiruthuraipoondi, near Kurichi Jothipuram, the driver of the bus, which was coming in the opposite direction and proceeding to Madurai, drove the same in a rash and negligent manner, dashed against the Innova car and caused the accident. In the accident, the deceased Selvam succumbed to his injuries in the hospital on 25.06.2017. Therefore, the respondents filed the above claim petition claiming compensation as against the appellant/Transport Corporation.

4.The appellant/Transport Corporation filed counter statement denying the averments made in the claim petition and stated that while the driver of the bus was driving the same in a careful manner, on seeing the Innova car, which was coming in the opposite direction, driven by its driver in a rash and negligent manner, stopped the bus on the left side of the road. At that time, the driver of the Innova car lost his control, dashed against the bus and invited the accident. The driver of the bus was not responsible for the accident. Therefore, the appellant/Transport Corporation is not liable to pay any compensation to the respondents. The appellant has also denied the age, avocation and income of the deceased. In any event, the compensation claimed by the respondents is excessive and prayed for dismissal of the claim petition.

5.Before the Tribunal, the 1st respondent, wife of the deceased, examined herself as P.W.1, one Sankaravadivelu, eye-witness to the accident, was examined as P.W.2 and 19 documents were marked as Exs.P1 to P19. The appellant/Transport Corporation did not let in any oral and documentary evidence.

6.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the bus belonging to the appellant/Transport Corporation and directed the appellant to pay a sum of Rs.28,53,118/- as compensation to the respondents.

7.Against the said award dated 18.12.2018 made in M.C.O.P.No.195 of 2017, the appellant/Transport Corporation has come out with the present appeal challenging the quantum of compensation awarded by the Tribunal.

8.The learned counsel appearing for the appellant/Transport Corporation contended that the respondents have stated that the deceased was running a lorry business and was earning a sum of

Rs.30,000/- per month. In the absence of any material evidence with regard to income of the deceased, the Tribunal erred in fixing a sum of Rs.24,000/- per month as notional income of the deceased. There is no evidence available on record to prove that after the accident, the respondents did not run the lorry and sold out the same. The respondents are receiving income from the lorry even after the death of the deceased. The respondents have not filed any Income Tax returns. The Tribunal erred in awarding a sum of Rs.4,49,918/- towards medical expenses without any supporting document. The amounts awarded by the Tribunal under different heads are excessive and prayed for setting aside the award of the Tribunal.

9.Per contra, the learned counsel appearing for the respondents contended that the respondents have filed R.C. book of the lorry and trip sheets to prove the avocation and income of the deceased. The Tribunal considering the same, fixed a sum of Rs.24,000/- per month as notional income of the deceased, which is not excessive. The total compensation awarded by the Tribunal is not excessive and prayed for dismissal of the appeal.

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

11.It is the contention of the respondents that the deceased was owning a lorry and was earning a sum of Rs.30,000/- per month. The respondents have filed Registration Certificate of the lorry, which stood in the name of the deceased Selvam. The respondents have filed trip sheets maintained by the deceased Selvam for the trips made by him using the lorry. Apart from the trip sheets, the respondents have not filed any document to show the income of the deceased. The Tribunal considering the Registration Certificate, trip sheet and evidence of P.W.1, wife of the deceased, held that the deceased would have earned a sum of Rs.800/- per day and fixed a sum of Rs.24,000/- per month as notional income of the deceased. The Respondents have not filed any document to show that the deceased was running the lorry all the days and was earning a sum of Rs.30,000/- per month. As rightly pointed out by the learned counsel appearing for the appellant that the notional income fixed by the Tribunal attracts income tax and the respondents have not filed any Income Tax returns of the deceased. In the absence of any material with regard to income of the deceased, the monthly income fixed by the Tribunal is excessive. The accident is of the year 2017 and hence, a sum of Rs.16,000/- per month is fixed as notional income of the deceased. The deceased was aged 55 years at the time of accident as per Ex.P3/Post-mortem certificate. The Tribunal granted 10% enhancement towards future prospects, applied multiplier '11' and deducted 1/3rd towards personal expenses, which are proper. Thus, the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.15,48,800/- (Rs.16,000/- + 1600 [Rs.16,000/- X 10%] X 12 X 11 X 2/3). The Tribunal has awarded a sum of Rs.4,49,918/- towards medical expenses as per Ex.P14/Medical bills and hence, the same is not interfered with. The amounts awarded by the Tribunal under all other heads are just and reasonable and hence, the same are hereby 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 or reduced
1.	Loss of dependency	23,23,200	15,48,800	Reduced
2.	Loss of consortium to the 1st respondent	40,000	40,000	Confirmed
3.	Loss of love and affection to the respondents 2 and 3	15,000	15,000	Confirmed
4.	Transportation	10,000	10,000	Confirmed
5.	Funeral expenses	15,000	15,000	Confirmed
6.	Medical expenses	4,49,918	4,49,918	Confirmed
	Total	28,53,118	20,78,718	Reduced by Rs.7,74,400/-

12.With the above modification, the Civil Miscellaneous Appeal is partly allowed. The compensation of Rs.28,53,118/- awarded by the Tribunal is hereby reduced to Rs.20,78,718/- 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, less the amount already deposited if any, within a period of twelve weeks from the date of receipt of a copy of this judgment. On such deposit, the respondents are permitted to withdraw their respective share of the award amount now determined by this Court, as per the apportionment fixed by the Tribunal, along with proportionate interest and costs, after adjusting the amount if any, already withdrawn. The appellant/Transport Corporation is permitted to withdraw the excess amount lying in the deposit to the credit of M.C.O.P.No.195 of 2017 on the file of Motor Accident Claims Tribunal, Sub Court, Mannarkudi, if the entire award amount has already been deposited by them. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

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

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

+1cc to Mr.Vijayakumar, Advocate Sr.4684
+1cc to Mr.Venkatachalam, Advocate Sr.4679

C.M.A.No.3115 of 2019
and
C.M.P.No.17419 of 2019

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