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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.03.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3241 of 2019

and

C.M.P.No.18570 of 2019

The Managing Director,
M/s.Tamil Nadu State Transportation
Corporation Limited,
Kumbakonam,
Karaikudi Region.

..

Appellant/2nd Respondent

Vs.

1.M.Rakku

2. Murugesan

... Respondents 1 & 2/Petitioners

3. K.Babu

...3rd Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 15.02.2019 made in M.C.O.P.No.142 of 2016 on the file of the Sub Court, (Motor Accidents Claims Tribunal), Sathiyamangalam.

For Appellant : Mr.D.Venkatachalam

For Respondents: Mr.R.Nalliyappan (For R1 & R2)

R3 : Not Ready in Notice

J U D G M E N T

(The matter is heard through Video Conferencing/Hybrid mode)

This Civil Miscellaneous Appeal has been filed by the appellant-Transport Corporation to set aside the judgment and decree dated 15.02.2019, made in M.C.O.P. No.142 of 2016, on the file of the Sub Court, (Motor Accident Claims Tribunal), Sathiyamangalam.

2.The appellant is the 2nd respondent in M.C.O.P. No.142 of 2016, on the file of the Sub Court, (Motor Accident Claims



Tribunal), Sathiyamangalam. The respondents 1 and 2/claimants filed the said claim petition, claiming a sum of Rs.20,00,000/- as compensation for the death of one Azhagu Rajan, who died in the accident that took place on 03.08.2015.

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3. According to the respondents 1 and 2, on the date of accident, when the deceased Azhagu Rajan was riding a Motorcycle bearing Registration No.TN-63-AD-8213 along with his friend Sathish Kumar as a pillion rider at Madurai to Thondi road, on the way to Keeranur Colony, near mud road at the left extreme end, the 3rd respondent, driver of the Bus bearing Registration No.TN-63-N-1573 belonging to the appellant-Transport Corporation coming in opposite direction, while overtaking one JCB which was going ahead, drove the Bus in a rash and negligent manner, came to the right side and dashed on the Motorcycle driven by the deceased and caused the accident. In the accident, the deceased Azhagu Rajan sustained fatal injuries. The accident occurred only due to rash and negligent driving by 3rd respondent, driver of the Bus. Hence, the respondents 1 and 2 filed the above claim petition, claiming compensation against the 3rd respondent as driver and appellant as owner of the Bus involved in the accident.

4. The 3rd respondent, driver of the TNSTC Bus, remained exparte before the Tribunal.

5. The appellant-Transport Corporation filed counter statement, denying all the averments made by the respondents 1 and 2 in the claim petition. According to the appellant-Transport Corporation, on the date of accident, the alleged Bus belonging to them was plied by the 3rd respondent from Devakottai to Sivagangai. While the Bus was proceeding from Kalaiyar Kovil Bus stop towards Sivagangai slowly and cautiously, on seeing the JCB vehicle which was going ahead suddenly turning towards right side, the 3rd respondent/driver of the Bus, hooted horn and applied brake. At that time, the deceased/rider of the Motorcycle who was coming in the opposite direction in a rash and negligent manner, without following rules of the road and without wearing helmet, dashed on the JCB vehicle and invited the accident. Hence, for the negligence of the deceased, the appellant is not liable to pay any compensation to the respondents 1 and 2. In any event, the respondents 1 and 2 have to prove the age, avocation and income of the deceased to claim compensation. The total compensation claimed by the respondents 1 & 2 is excessive and prayed for dismissal of the claim petition.

6. Before the Tribunal, the 1st respondent examined herself as P.W.1, Dr.Karuppiyah was examined as P.W.2 and 14 documents were marked as Exs.P1 to P14. The appellant examined the 3rd



respondent/driver of the Bus involved in the accident 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 only due to rash and negligent driving by 3rd respondent, driver of the Bus belonging to the appellant-Transport Corporation and directed the appellant as well as the 3rd respondent to pay a sum of Rs.19,74,136/- as compensation to the respondents 1 and 2.

8.To set aside the award dated 15.02.2019, made in M.C.O.P. No.142 of 2016, 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 only the deceased drove the Motorcycle from opposite direction in a rash and negligent manner, without following the traffic rules and dashed against the JCB vehicle, which was proceeding in front of the Bus and invited the accident. The Tribunal erred in fixing the entire negligence on the 3rd respondent, driver of the Bus belonging to the appellant merely relying on the uncorroborated evidence of P.W.1 and FIR. The deceased was an Engineering college student and a non-earning member. In the absence of any proof by the respondents 1 and 2 regarding the avocation of the deceased, the Tribunal erred in fixing excessive sum of Rs.10,000/- per month as notional income. The Tribunal without considering the fact that the deceased was a Bachelor at the time of accident, erroneously deducted 1/3rd towards personal expenses of the deceased, instead of 50%. The total compensation granted by the Tribunal is excessive and prayed for setting aside the award of the Tribunal.

10.Per contra, the learned counsel appearing for the respondents 1 and 2/claimants contended that the accident has occurred only due to rash and negligent driving by the 3rd respondent, driver of the Bus belonging to the appellant-Transport Corporation. To prove the same, the 1st respondent has examined herself as P.W.1 and marked the FIR registered against the 3rd respondent as Ex.P1. At the time of accident, the deceased was an Engineering student. The Tribunal following the judgment of the Hon'ble Apex Court and the year of accident, rightly fixed a sum of Rs.10,000/- per month as notional income of the deceased and the same is not excessive. The total compensation awarded by the Tribunal is 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 1 and 2 and perused the materials available on record.



12. It is the case of the respondents 1 and 2 that due to the rash and negligent act of the 3rd respondent, driver of the Bus belonging to the appellant-Transport Corporation, who suddenly stopped the Bus, the accident has occurred. To substantiate the same, the 1st respondent examined herself as P.W.1, examined the eye-witness to the accident as P.W.2 and marked FIR which was registered against the 3rd respondent, driver of the Bus as Ex.P1. On the other hand, it is the case of the appellant that on seeing the JCB vehicle which was going in front of the TNSTC Bus taking sudden right turn, the 3rd respondent/driver of the TNSTC Bus hooted horn and applied brake to stop the Bus. In spite of the signal given, the deceased/rider of the Motorcycle driving the vehicle in rash and negligent manner, from opposite direction, hit against the JCB Vehicle and invited the accident. To prove the said contention, the appellant examined 3rd respondent, driver of the Bus as R.W.1. FIR was registered against the driver of the Bus. The appellant or R.W.1 did not lodge any complaint against the deceased or did not file any objection to the FIR being registered against the driver of the Bus. Except examining the driver of the Bus who is an interested witness, the appellant has not examined any independent eye-witness to prove their case. The Tribunal considering the evidence of P.W.1, P.W.2, R.W.1 and FIR, has held that the accident occurred only due to rash and negligent driving by driver of the Bus. There is no error in the said finding of the Tribunal warranting interference by this Court.

13. As far as the quantum of compensation is concerned, it is the case of the respondents 1 and 2 that at the time of accident, the deceased was aged 22 years, studying 4th year B.E. Mechanical Engineering. The Tribunal considering the judgment of the Hon'ble Apex Court and this Court, fixed the notional income of the deceased as Rs.10,000/- per month. The accident is of the year 2015. Considering the year of accident and educational qualification of the deceased, this court is of the view that had he been alive, he would have earned well. Hence, the monthly income of the deceased fixed by the Tribunal is enhanced to Rs.12,000/-. At the time of accident, the deceased was a bachelor, aged 22 years. Following the judgment of the Hon'ble Apex Court 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd. v. Pranay Sethi and others], the Tribunal rightly granted 40% enhancement towards future prospects, but erroneously applied the multiplier '17' and deducted 1/3rd towards personal expenses of the deceased. As per the judgment of the Hon'ble Apex Court reported in 2009 (2) TNMAC 1 SC Supreme Court [Sarla Verma & others vs. Delhi Transport Corporation & another], the correct multiplier applicable is '18'. The Tribunal ought to have deducted 50% towards personal expenses of the deceased,



considering the fact that he was a bachelor at the time of accident. Hence, by fixing Rs.12,000/- per month as notional income, applying the multiplier '18' and deducting 50% towards personal expenses of the deceased, the amount awarded by the Tribunal towards loss of dependency is modified to Rs.18,14,400/- {[Rs.12,000/- + Rs.4,800/- (40% of Rs.12,000/-)] x 12 x 18 x 1/2}. The Tribunal failed to award any amount towards loss of estate. The respondents 1 and 2 are entitled to a sum of Rs.15,000/- towards loss of estate. 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.	Disability	19,04,136/-	18,14,400/-	Reduced
2.	Funeral expenses	15,000/-	15,000/-	Confirmed
3.	Loss of estate	-	15,000/-	Granted
4.	Transportation	10,000/-	10,000/-	Confirmed
5.	Loss of love and affection	45,000/-	45,000/-	Confirmed
	Total	19,74,136/-	18,99,400/-	Reduced by Rs.74,736/-

14. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.19,74,136/- is modified to Rs.18,99,400/- 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 as well as the 3rd respondent are directed to deposit the award amount, now determined by this Court, along with interest and costs, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P. No.142 of 2016. On such deposit, the respondents 1 and 2 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 appellant-Transport Corporation is permitted to withdraw the excess amount, lying in the deposit to the credit of M.C.O.P. No.142 of 2016, if any already deposited by them. It is made clear that if the respondents 1 and 2 have already withdrawn the entire award amount, the



appellant/Transport Corporation is not entitled to recover the same from the respondents 1 and 2. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

gsa

To

The Motor Accident Claims Tribunal
The Subordinate Judge,
Sathiyamangalam.

Copy To

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

+1cc to Mr.D.Venkatachalam, Advocate, S.R.No.15687

C.M.A. No.3241 of 2019

BR(CO)
GN(01/10/2021)