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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 24.03.2021
Pronounced on : 27.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

C.M.A.No.1387 of 2014
and
M.P.No.1 of 2014

The Managing Director,
Tamil Nadu State Transport Corporation Ltd., (Coimbatore)
No.37, Mettupalayam Road,
Coimbatore-43

...Appellant/2nd Respondent

Vs.

- 1.T.Papathi
W/o.Late Thulasimani
- 2.S.Nirmaladevi
W/o.Late Shanmugam
- 3.M.Renuga
W/o.Rajasekar
- 4.R.Jayashanthi
W/o.K.Ramesh
- 5.Subramaniam @ Subramani
S/o.Gurusamy

..Respondents/Petitioners & 1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 26.06.2013 made in M.C.O.P.No.213 of 2012 on the file of the Motor Accidents Claims Tribunal, 2nd Additional District Court, Erode.

For Appellant : Mrs.Indhumathy
for Mr.A.Sundaravadhanan

For R1 to R4 : No Appearance



JUDGMENT

This Civil Miscellaneous Appeal has been filed against award dated 26.06.2013 made in M.C.O.P.No.213 of 2012 on the file of the Motor Accidents Claims Tribunal, 2nd Additional District Court, Erode.

2.The appellant is the second respondent in M.C.O.P.No.213 of 2012 on the file of the Motor Accidents Claims Tribunal, 2nd Additional District Court, Erode. The respondents 1 to 4 filed the above said claim petition, claiming a sum of Rs.30,00,000/- as compensation for the death of one C.Thulasimani, who died in the accident that took place on 02.10.2007.

3.According to the respondents 1 to 4, on 02.10.2007, at about 4.30 p.m., while the deceased C.Thulasimani was riding his TVS Scooty bearing Registration No.TN-33-P-5342, came from West to East direction at the left extreme of the Erode to Perundurai Road, near Palayapalayam Privu. At that time, a Bus bearing Registration No.TN-33-N-1800 which was driven by the 5th respondent in a rash and negligent manner, dashed behind the TVS Scooty. As a result of which, the deceased was thrown off the Scooty and the bus ran over the deceased and he sustained multiple fractures and grievous injuries. Immediately he was taken to Government Head Quarters Hospital, Erode and there advised to be admitted in a private hospital. But, he died on the way to Private hospital due to the injuries sustained by him in the accident. Based on the above averments, the respondents 1 to 4 have filed the claim petition claiming compensation against the appellant/Transport Corporation.

4.The 5th respondent remained ex-parte before the Tribunal.

5.The appellant/Transport Corporation filed counter statement and denied the averments made in the claim petition. The appellant contented that the respondents 1 to 4 have to prove the age, occupation and income of the deceased and that they are the dependants of the deceased. In any event, the total compensation claimed is excessive and prayed for dismissal of the claim petition.

6.Before the Tribunal, the 1st respondent/wife of the deceased examined herself as P.W.1 and marked 14 documents as Exs.P-1 to P-14. On the side of the appellant, the 5th respondent/driver of the bus was examined as R.W.1 and no documents were marked.



7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to the rash and negligent driving by the driver of the bus belonging to the appellant/Transport Corporation and directed the appellant-Transport Corporation to pay a sum of Rs.4,87,275/- as compensation to the respondents 1 to 4.

8.Against the said award dated 26.06.2013 made in M.C.O.P.No.213 of 2012, the appellant/Transport Corporation has come out with the present appeal with regard to negligence and quantum of compensation granted to the respondents 1 to 4.

9.Mrs.Indhumathy, for Mr.A.Sundaravadhanan, learned counsel appearing for the appellant-Transport Corporation submitted her arguments. As per the submission of the learned counsel for the appellant the award is excessive, particularly Rs.3,52,275/- towards pecuniary loss, Rs.1,00,000/- towards loss of love and affection, Rs.25,000/- towards loss of consortium and Rs.10,000/- towards funeral expenses. The total award amount of Rs.4,87,275/- which is excessive and calling for interference by this Court. The learned Judge failed to note that the two wheeler suddenly crossed the path of the bus causing this accident.

10.Heard the learned counsel appearing for the appellant/Transport Corporation and perused the materials available on record.

11.On perusal of the records, it is found that the competent person, the driver of the bus was examined whose evidence was not accepted in the light of the cross examination. On perusal of the award, it is found that the Tribunal, had assessed the evidence particularly documentary evidence furnished by the claimants is proof of the claimant that the deceased C.Thulasimani was a farmer engaged in agricultural activities and also he was doing milk vending business and he was also running bakery and cool drink stalls at Erode Main Bus Stand. To prove the same, licence fee was marked as Ex.P-9, Ex.P-10 is the Profession tax receipts, Ex.P-11 is the Membership Certificate of Erode Perundu Nilaya Viyabarigal Sangam, Ex.P-12 is the Monthly licence fee book, Ex.P-13 is the Partition deed and Ex.P-14 is the copy of income tax return from 2006-2007 form 2D. Based on Ex.P-14/Income tax return, the annual income of the deceased was assessed as Rs.69,300/- for the financial year 2005-2006. The above documents are not sufficient to prove that the deceased was earning Rs.75,000/- per month in the above said



business and agricultural work. However, the Tribunal fixed his annual income is assessed Rs.67,100/- per year after deducting the income tax and 1/4th deduction towards his personal expenses as he is survived by his wife and three daughters. After deducting 1/4th towards personal expenses, remaining amount of Rs.50,325/- was taken as annual income by the Tribunal and the age of the deceased is 65 at the time of accident. Considering the age, the multiplier '7' is applicable for this age group. Therefore, the loss of dependency arrived at Rs.3,52,275/- (Rs.50,325/- X 7). The Tribunal applying proper multiplier as per the ruling of the Hon'ble Apex Court in Sarla Verma & others vs. Delhi Transport Corporation & another, reported in 2009 (2) TNMAC 1 SC, had properly calculated the loss of income with the documentary evidence available before the Tribunal. The Tribunal awarded a sum of Rs.1,00,000/- towards loss of love and affection for the respondents 1 to 4 which is excessive and the same is reduced to Rs.75,000/- (Rs.25,000/- X 3) for the respondents 2 to 4 alone since the the wife of the deceased was awarded consortium.

12. Except the above modification under the head "loss of love and affection", the amounts awarded by the Tribunal under the other heads are just and reasonable and the same are hereby confirmed. Thus, now the compensation is worked out 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 dependency	3,52,275/-	3,52,275/-	Confirmed
2.	Loss of consortium to the 1 st respondent	25,000/-	25,000/-	Confirmed
3.	Loss of love and affection for the respondents 2 to 4	1,00,000/-	75,000/-	Reduced
4.	Funeral Expenses	10,000/-	10,000/-	Confirmed
	Total	Rs.4,87,275/-	Rs.4,62,275/-	reduced by Rs.25,000/-



13. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.4,87,275/- is hereby modified to Rs.4,62,275/- with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant/Transport Company is directed to deposit the award amount now determined by this Court, along with interest and costs to the credit of M.C.O.P.No.213 of 2012 on the file of the Motor Accidents Claims Tribunal, 2nd Additional District Court, Erode, through RTGS or NEFT method as held by this Court in (The Oriental Insurance Company Limited, Kannur Vs. Rajesh and two others) 2016 (1) TN MAC 433, after adjusting the amount, if any, already deposited, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the respondents 1 to 4 are permitted to withdraw their respective share of the modified award amount as per the ratio of apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. The appellant/Transport Corporation is permitted to withdraw the excess amount if any lying in the deposit to the credit of M.C.O.P. No.213 of 2012, if the entire award amount has already been deposited by them. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

// True Copy//

Sub Assistant Registrar

gbi

To

1. The 2nd Additional District Judge,
Motor Accidents Claims Tribunal, Erode.

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

C.M.A.No.1387 of 2014

SR(CO)
SP(23/11/2021)