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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.01.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2012 of 2020

and

C.M.P.No.14741 of 2020

The Managing Director  
Tamil Nadu State Transport  
Corporation Ltd.  
Villupuram.

... Appellant/ Respondent

Vs.

1.Rajammal

2.Santhi

3.Kalyani

4.Murugammal

5.Rajendiran

6.Radha

...Respondents/Claimants

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 20.12.2019 made in M.C.O.P.No.1022 of 2015 on the file of Motor Accident Claims Tribunal, Additional District Court, Krishnagiri.

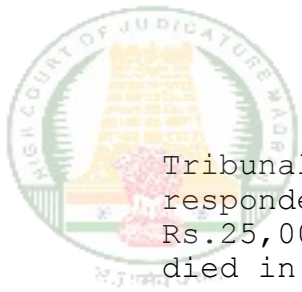
For Appellant : Mr.C.S.K.Sathish

#### 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 20.12.2019 made in M.C.O.P.No.1022 of 2015 on the file of Motor Accident Claims Tribunal, Additional District Court, Krishnagiri.

2.The appellant/Transport Corporation is the respondent in M.C.O.P.No.1022 of 2015 on the file of Motor Accident Claims



Tribunal, Additional District Court, Krishnagiri. The respondents filed the said claim petition claiming a sum of Rs.25,00,000/- as compensation for the death of one Perumal, who died in the accident that took place on 12.03.2015.

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3. According to the respondents, on the date of accident i.e., on 12.03.2015 at 19.00 hours, while one Jayaraman was riding TVS XL along with the deceased Perumal from Echambadi to Pommadasampatti after finishing their business, near Kongavembu Government Primary Health Centre in Harur to Uthangarai Road on the extreme left side of the road, the bus belonging to the appellant/Transport Corporation, which was coming in the opposite direction, driven by its driver in a rash and negligent manner, dashed against the two wheeler in which the deceased was travelling and caused the accident. In the accident, the deceased Perumal and the said Jayaraman sustained fatal injuries and died on the spot. Hence, the respondents have filed the above claim petition claiming compensation against the appellant.

4. The appellant/Transport Corporation filed counter statement denying the averments made by the respondents and contended that the driver of the bus is not responsible for the accident. The rider of the two wheeler, who was coming in the opposite direction, alone dashed against the bus and invited the accident. The accident has occurred due to rash and negligent riding by the rider of the two wheeler and hence, the deceased is solely responsible for the accident. The rider of the two wheeler did not possess valid driving license and did not wear helmet at the time of accident. Therefore, the appellant 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 3rd respondent, daughter of the deceased, examined herself as P.W.1, one Murugan, an eye-witness to the accident, was examined as P.W.2 and 17 documents were marked as Exs.P1 to P17. The appellant/Transport Corporation examined one Kuppusamy, the driver of the bus as R.W.1 and did not file any 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.13,86,250/- as compensation to the respondents.



7. Against the said award dated 20.12.2019 made in M.C.O.P.No.1022 of 2015, the appellant/Transport Corporation has come out with the present appeal.

8. Though the learned counsel appearing for the appellant/Transport Corporation raised grounds with regard to negligence, at the time of arguments, he restricted his arguments only with regard to quantum of compensation awarded by the Tribunal and age of the deceased fixed by the Tribunal.

9. The learned counsel appearing for the appellant/Transport Corporation contended that the respondents have not filed any valid document to prove the age, avocation and income of the deceased. In the absence of any material evidence, the Tribunal erred in fixing the age of the deceased as 50 years and a sum of Rs.9,000/- per month as notional income of the deceased. The Tribunal failed to appreciate the improbability in the evidence of P.W.1 with regard to age of the 1<sup>st</sup> respondent, who is 55 years old and erred in awarding compensation to her. The Tribunal ought to have awarded 10% enhancement instead of 25% enhancement towards future prospects. The amounts awarded by the Tribunal under different heads are excessive and prayed for setting aside the award of the Tribunal.

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

11. From the materials available on record, it is seen that it is the contention of the respondents that the deceased was doing cattle business and was earning not less than Rs.20,000/- per month. They failed to prove the same. In the absence of any material evidence, the Tribunal fixed a sum of Rs.9,000/- per month as notional income of the deceased. The accident is of the year 2015 and the notional income fixed by the Tribunal is meagre. The Tribunal fixed the age of the deceased as 50 years at the time of accident as per Ex.P2/post-mortem certificate. The contention of the learned counsel appearing for the appellant is that in the claim petition, the age of the 1<sup>st</sup> respondent, wife of the deceased was mentioned as 55 years and therefore, the Tribunal erred in fixing age of the deceased as 50 years. P.W.1 in her cross-examination denied the suggestion that the 1<sup>st</sup> respondent was aged 55 years and admitted that the age of the deceased was 50 years at the time of accident. The appellant did not file any objection to disprove the evidence of P.W.1. The Tribunal applied multiplier '13', granted 25% enhancement towards future prospects and awarded a sum of Rs.13,16,250/- towards loss of dependency, which is not excessive. The Tribunal after considering all the materials on



record, awarded compensation under different heads, which are just compensation and the same does not warrant any interference by this Court.

12. In the result, this Civil Miscellaneous Appeal is dismissed and the sum of Rs.13,86,250/- awarded by the Tribunal as compensation to the respondents along with interest and costs is confirmed. The appellant/Transport Corporation is directed to deposit the entire award amount 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, on the basis of apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-  
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To  
1.The Additional District Judge  
Motor Accident Claims Tribunal  
Krishnagiri.

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

+1cc to Mr.C.S.K.Sathish, Advocate SR.No. 1585

C.M.A.No.2012 of 2020  
and  
C.M.P.No.14741 of 2020

VBA CO  
A.SK(31.08.2021)