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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

C.M.A.NO.1804 OF 2017

AND

M.P.NO.9619 OF 2017

The Managing Director,
Tamil Nadu State Transport Corporation,
Villupuram Limited,
No.3/137, Salamedu,
Vazhudhareddy Post,
Villupuram.

... Appellant/Respondent

Vs.

1. Valli
2. Minor Deepthi
3. Minor Divya
4. Minor Manikandan
5. Minor Kumaran
6. Kamala

... Respondents/Petitioners

(Minor rep.by Next Friend/Guardian/Mother Tmt.Valli)

Prayer:

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 24.11.2016 made in M.C.O.P.No.188 of 2014 on the file of the Motor Accidents Claims Tribunal, The Special Sub Court (MCOP), Tiruvannamalai.

For Appellant : Mr.K.J.Sivakumar

For Respondents : Mr.B.Jawahar

J U D G M E N T

The matter is heard through "Video Conferencing".

This Civil Miscellaneous Appeal has been filed to set aside the award dated 24.11.2016 made in M.C.O.P.No.188 of 2014 on the file of the Motor Accidents Claims Tribunal, The Special Sub Court, (MCOP), Tiruvannamalai.

2. The appellant is the respondent in M.C.O.P.No.188 of 2014 on the file of the Motor Accidents Claims Tribunal, The Special



Sub Court, (MCOP), Tiruvannamalai. The respondents filed the above said claim petition claiming a sum of Rs.10,00,000/- as compensation for the death of one Velu, who died in the accident that took place on 17.10.2013.

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3. The Tribunal considering the pleadings, oral and documentary evidence, came to the conclusion that both the deceased and driver of the bus belonging to the respondent-Transport Corporation, contributed negligence and fixed 30% on the part of the deceased and 70% on the part of the driver of the bus and directed the respondent to pay Rs.12,32,000/- (70% on Rs.17,60,000/- award amount) as compensation to the claimants.

4. The appellant has come out with the present appeal, challenging the portion of the award fixing 70% negligence on part of the Transport Corporation and the quantum.

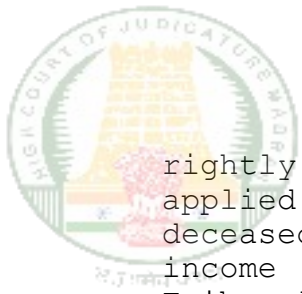
5. Though the appellant has raised grounds with regard to negligence, at the time of arguments, the learned counsel for the appellant restricted his arguments with regard to quantum alone.

6. The learned counsel appearing for the appellant contended that the the amounts awarded by the Tribunal towards consortium and other heads are highly excessive and prayed for setting aside the award of the Tribunal.

7. The learned counsel for the respondents submitted that the amounts awarded by the Tribunal under different heads are not excessive and prayed for dismissal of the appeal.

8. Heard the learned counsel appearing for the appellant-Transport Corporation and the learned counsel for the respondents and perused the entire materials on record.

9. It is the case of the respondents in the claim petition that the deceased was an Electrician aged 37 years and was earning a sum of Rs.6,000/- per month at the time of accident. They did not file any document to prove the same. In the absence of any material evidence to prove the avocation and income of the deceased, the Tribunal considering the age, year of accident and nature of work done by the deceased, fixed a sum of Rs.9,000/- per month as notional income of the deceased, which is not excessive. As per Ex.P2/post mortem certificate, the deceased was aged 37 years at the time of accident. The Tribunal, following the judgments of the Hon'ble Apex Court reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd. v. Pranay Sethi and others] and 2009 (2) TN MAC 1 SC [Sarla Verma & Others vs. Delhi Transport Corporation & another]



rightly granted 50% enhancement towards future prospects and applied multiplier '15'. There are five dependants of the deceased and the Tribunal has rightly deducted 1/4th from the income of the deceased towards his personal expenses. The Tribunal considering the entire materials on record, has awarded 70% of the compensation i.e., Rs.12,32,000/- out of Rs.17,60,000/- as compensation to the respondents, which is not excessive warranting interference by this Court. It is seen that prior to the death of the deceased he was admitted in Hospital for four days i.e., from 17.10.2013 to 20.10.2013 and definitely he would have suffered pain. However, the Tribunal has not awarded any amount towards transportation, pain and suffering, attender charges and loss of estate. In view of the failure on the part of the Tribunal for not awarding any amount towards transportation, pain and sufferings, attender charges and loss of estate following the judgment reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd. vs. Pranay Sethi and others], restricting the amount awarded towards "Loss of Consortium" as Rs.40,000/-, the excessive amount of Rs.60,000/- awarded under the said head is adjusted towards the aforesaid four heads at Rs.15,000/- each. 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	Loss of income	12,15,000/-	12,15,000/-	Confirmed
2	Loss of consortium to the 1 st petitioner	1,00,000/-	40,000/-	Reduced
3	Loss of love and affection of the petitioners 2 to 5 at the rate of Rs.1,00,000/- each	4,00,000/-	4,00,000/-	Confirmed
4	Loss of love and affection of the 6 th petitioner	20,000/-	20,000/-	Confirmed
5	Funeral expenses	25,000/-	25,000/-	Confirmed
6	Pain and sufferings	-	15,000/-	Granted
7	Loss of estate	-	15,000/-	Granted
8	Transportation	-	15,000/-	Granted
9	Attender charges	-	15,000/-	Granted
	Total	17,60,000/-	17,60,000/-	Confirmed



10. In the result, this Civil Miscellaneous Appeal is disposed of with the above modification. The appellant-Transport Corporation is directed to deposit 70% of the award amount, i.e., Rs.12,32,000/- along with interest and costs, less the amount if any already deposited, 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.188 of 2014 on the file of the Motor Accidents Claims Tribunal, Special Sub Court, Tiruvannamalai. On such deposit, the major claimants are permitted to withdraw their respective shares in the award amount along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. As far as the share of the minor claimants are concerned, the direction of the Tribunal remains intact. No costs. Consequently connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS VI)

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Sub Assistant Registrar

dpq

To

The Motor Accidents Claims Tribunal,
The Special Sub Court (MCOP),
Tiruvannamalai.

Copy To

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

+1cc to Mr.K.J.Sivakumar, Advocate, S.R.No.38258

C.M.A.No.1804 of 2017
and M.P.No.9619 of 2017

PM(CO)
PM/15/11/2021