



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.01.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3925 of 2019

and

M.P.No.22315 of 2019

The Managing Director,
Tamil Nadu State Transport Corporation Limited,
Coimbatore Division,
Coimbatore, Mettupalayam Road,
Coimbatore - 43.

..Appellant/Respondent

Vs.

1.Chandra @ Sankari

2.Muthal

3.Vellingiri

4.Selvi

..Respondents/Petitioners

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 11.01.2019 made in M.C.O.P.No.2239 of 2016 on the file of the Motor Accidents Claims Tribunal, II Additional District and Sessions Court, Tiruppur.

For Appellant : Mr.K.J.Sivakumar

For Respondents : Mr.Ma.P.Thangavel

J U D G M E N T

The matter is heard through "Video Conferencing".

2.This Civil Miscellaneous Appeal has been filed against the award dated 11.01.2019 made in M.C.O.P.No.2239 of 2016 on the file of the Motor Accidents Claims Tribunal, II Additional District and Sessions Court, Tiruppur.

3.The appellant is the respondent in M.C.O.P.No.2239 of 2016 on the file of the Motor Accidents Claims Tribunal, II Additional District and Sessions Court, Tiruppur. The respondents filed the said claim petition claiming a sum of Rs.10,00,000/- as compensation for the death of one Mahali, who died in the accident that took place on 07.04.2015.



4. According to respondents, on 07.04.2015 at about 14.45 hours, while the deceased Mahali was crossing the Tiruppur - Avinashi Road near Gandhi Nagar from East to West, the driver of the bus belonging to appellant-Transport Corporation drove the bus in a rash and negligent manner, dashed against the deceased and caused the accident. In the accident, the said Mahali sustained fatal injuries and immediately after the accident, the said Mahali was taken to Government Hospital, Tiruppur and thereafter she was referred to Government Hospital, Coimbatore. In spite of treatment, the said Mahali succumbed to injuries. Therefore, the respondents filed the said claim petition claiming a sum of Rs.10,00,000/- as compensation against the appellant-Transport Corporation.

5. The appellant-Transport Corporation filed counter statement and denied all the averments made by the respondents. According to the appellant, the driver of the bus belonging to appellant-Transport Corporation drove the same cautiously by observing the road traffic rules. The deceased only suddenly crossed the road without noticing the oncoming bus, dashed on the bus and invited the accident. The accident has not occurred as alleged by the respondents, whereas the accident has occurred only due to the negligence on the part of the deceased. The respondents have to prove the age, avocation and income of the deceased by producing valid documents. The respondents have to prove that they are the legal heirs of the deceased by producing valid legal heirship certificate. In any event, the quantum of compensation claimed by the respondents is highly excessive and prayed for dismissal of the claim petition.

6. Before the Tribunal, the 1st respondent examined herself as P.W.1 and one Karuppusamy, eyewitness to the accident was examined as P.W.2 and 5 documents were marked as Exs.P1 to P5. On behalf of the appellant, one Ravikumar, Driver of the bus belonging to appellant-Transport Corporation was examined as R.W.1 and no documentary evidence was let in.

7. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the bus belonging to appellant-Transport Corporation, awarded a sum of Rs.7,29,000/- as compensation and directed the appellant to pay a sum of Rs.7,00,000/- as compensation to the respondents.

8. Against the said award dated 11.01.2019 made in M.C.O.P.No.2239 of 2016, the appellant has come out with the present appeal.



9.The learned counsel appearing for the appellant-Transport Corporation contended that the Tribunal erroneously fixed negligence on the part of the driver of the bus only based on Ex.P1/F.I.R., which was registered against him. In the absence of any material evidence with regard to avocation and income, a sum of Rs.8,000/- per month fixed by the Tribunal as notional income of the deceased is excessive. The total compensation awarded by the Tribunal is highly excessive and prayed for setting aside the award passed by the Tribunal.

10.Per contra, Mr.Ma.P.Thangavel, learned counsel appearing for the respondents contended that the accident has occurred only due to the negligence on the part of the driver of the bus belonging to appellant. The Tribunal considering the evidence of P.W.2 and Ex.P1/F.I.R., held that the accident has occurred only due to the negligence on the part of the driver of the bus belonging to appellant-Transport Corporation and the same is in order. The deceased was aged 65 years, working as Agricultural Coolie and was earning a sum of Rs.10,000/- per month. But the Tribunal has fixed only a meagre sum of Rs.8,000/- per month as notional income of the deceased. The Tribunal ought to have awarded the entire award amount of Rs.7,29,000/- as compensation to the respondents instead of granting Rs.7,00,000/-. The total compensation awarded by the Tribunal under different heads is not excessive and prayed for dismissal of the appeal.

11.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the respondents and perused the entire materials on record.

12.From the materials available on record, it is seen that it is the contention of the respondents that while the deceased Mahali was crossing the Tiruppur - Avinashi Road near Gandhi Nagar from East to West, the driver of the bus belonging to appellant-Transport Corporation drove the bus in a rash and negligent manner, dashed against the deceased and caused the accident. To prove the said contention, the 1st respondent examined herself as P.W.1 and one Karuppusamy, eyewitness to the accident was examined as P.W.2 and marked F.I.R., which was registered against the driver of the bus belonging to appellant-Transport Corporation as Ex.P1. On the other hand, it is the case of the appellant-Transport Corporation that the deceased only suddenly crossed the road without noticing the oncoming bus, dashed on the bus and invited the accident. To prove their case, the driver of the bus was examined as R.W.1. The appellant-Transport Corporation neither examined any eyewitness to the accident nor filed any objection to the F.I.R., which was registered against the driver of the bus belonging to appellant. Further, R.W.1-driver of the bus was an interested witness. The



Tribunal considering the evidence of P.W.1, P.W.2, Ex.P1/F.I.R., R.W.1 and failure on the part of the appellant-Transport Corporation for not filing any objection to the F.I.R., held that accident has occurred only due to the negligence on the part of the driver of the bus belonging to the appellant-Transport Corporation. There is no error in the said finding of the Tribunal warranting interference by this Court.

13.As far as quantum of compensation is concerned, it is the contention of the respondents that the deceased was aged 65 years, working as Agricultural Coolie and was earning a sum of Rs.10,000/- per month. The Tribunal has fixed a sum of Rs.8,000/- per month as notional income of the deceased. The accident occurred in the year 2017 and the notional income fixed by the Tribunal is proper. The multiplier adopted and $1/4^{\text{th}}$ deduction made by the Tribunal are correct. The Tribunal after fixing monthly income of the deceased at Rs.8,000/-, adopting multiplier '7' and deducting $1/4^{\text{th}}$ towards personal expenses, awarded a sum of Rs.5,04,000/- towards loss of dependency and the same is just and reasonable. The Tribunal has awarded excessive sum of Rs.2,00,000/- towards loss of love and affection and hence the same is reduced to Rs.80,000/-. The Tribunal has not awarded any amount towards loss of estate. The respondents are entitled to a sum of Rs.15,000/- towards loss of estate. The amounts awarded by the Tribunal towards funeral expenses and transportation 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
1.	Loss of dependency	5,04,000/-	5,04,000/-	Confirmed
2.	Loss of love and affection	2,00,000/-	80,000/-	Reduced
3.	Transportation	10,000/-	10,000/-	Confirmed
4.	Funeral expenses	15,000/-	15,000/-	Confirmed
5.	Loss of estate	-	15,000/-	Granted
	Total	Rs.7,29,000/- - rounded off to Rs.7,00,000/- -	Rs.6,24,000/- -	Reduced by Rs.76,000/-



14. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.7,00,000/- is hereby reduced to Rs.6,24,000/- 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 modified award amount now determined by this Court, 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.2239 of 2016 on the file of the Motor Accidents Claims Tribunal, II Additional District and Sessions Court, Tiruppur. On such deposit, the respondents are permitted to withdraw the 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.2239 of 2016, if the entire award amount has already been deposited by them. Consequently, the connected Miscellaneous Petition is closed. No costs.

s/d-
Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

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To

1. The II Additional District and Sessions Judge,
Motor Accidents Claims Tribunal,
Tiruppur.

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

+1 CC to Mr.K.J.Sivakumar, Advocate sr 3664

+1 CC to Mr.Ma.P.Thangavel, Advocate sr 3619.

C.M.A.No.3925 of 2019

PA (CO)
SP(11/08/2021)