IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.11.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.219 of 2014
and
M.P.No.1 of 2014

The Managing Director,
Tamil Nadu State Transport Corporation Limited,
313, Mettupalayam Road,
Coimbatore. .. Appellant/2nd Respondent

Vs.

1.Praveena
2.Minor. Pranaya Sri
(Minor 2nd respondent represented by her
Mother / Next Friend, Praveena, 1st respondent
herein)
3.Muthulakshmi ... Respondents 1 to 3/Petitioners 1 to 3
4.R.Duraisamy .. 4th Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 06.09.2012 made in M.C.O.P.No.1090 of 2010, on the file of the Motor Accidents Claims Tribunal, IV Additional District Judge, Fast Track Court No.II, Coimbatore.

| | | |
|---|---|---|
| For Appellant | : | Mr.A.Sundaravadhanan |
| For RR 1 to 3 | : | Mr.S.Makesh |
| For R4 | : | Given up |

J U D G M E N T
(The matter is heard through "Video Conferencing/Hybrid mode".)

This Civil Miscellaneous Appeal has been filed to set aside the award dated 06.09.2012 made in M.C.O.P.No.1090 of 2010, on the file of the Motor Accidents Claims Tribunal, IV Additional District Judge, Fast Track Court No.II, Coimbatore.

2.Heard the learned counsel appearing for the appellant-

Transport Corporation as well as the learned counsel appearing for the respondents 1 to 3 and perused the entire materials on record.

3.The appellant is the 2nd respondent in M.C.O.P.No.1090 of 2010, on the file of the Motor Accidents Claims Tribunal, IV Additional District Judge, Fast Track Court No.II, Coimbatore. The respondents 1 to 3 filed the above said claim petition claiming a sum of Rs.30,00,000/- as compensation for the death of one Sathish Kumar, who died in the accident that took place on 02.02.2010.

4.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by 4th respondent, the driver of the bus belonging to appellant-Transport Corporation and directed the appellant-Transport Corporation to pay a sum of Rs.11,71,000/- as compensation to the appellants 1 to 3.

5.According to respondents 1 to 3, on 02.02.2010 at about 09.45 P.M., while the deceased Sathish Kumar was riding in his Bajaj Pulsar motorcycle bearing Registration No.TN 40 X 7970 by adhering the traffic rules and regulations from west to east direction on the left side of Annur to Avinashi Road near Ure Gounder Thottam at Uthupalayam, the 4th respondent, driver of the bus belonging to appellant-Transport Corporation drove the same in a rash and negligent manner from the opposite direction, dashed on the motorcycle driven by the said Sathish Kumar and caused the accident. In the accident, the said Sathish Kumar sustained grievous injuries all over the body and subsequently he died on the way to Hospital. To substantiate their claim, the 1st respondent examined herself as P.W.1, one Gopalakrishnan, one of the partners of 'Sri Shanmuga Food Product' was examined as P.W.2 and one Anandaraj, eyewitness to the accident was examined as P.W.3 and marked 12 documents as Exs.P1 to P12. Ex.P12 is an F.I.R., which was registered against the driver of the bus, 4th respondent herein.

6.On the other hand, it is the case of the appellant-Transport Corporation that the deceased himself only dashed the motorcycle against the bus and invited the accident. To prove their case, the appellant examined the 4th respondent, driver of the bus as R.W.1 and did not mark any document. R.W.1 deposed that accident has occurred only due to rash and negligent riding by the deceased. The Tribunal considering the fact that no such questions were put to P.W.3/eyewitness by the learned counsel for appellant, no independent witness was examined by the appellant, accepted the evidence of P.W.3/eyewitness and held that accident has occurred only due to the negligence of the 4th respondent / driver of the bus. There is no error in the said finding of the Tribunal.

7.As far as quantum of compensation is concerned, the wife of the deceased examined herself as P.W.1 and deposed that deceased was partner of 'Sri Shanmuga Food Product' and also proprietor of K.T.C. Yarns and was earning a sum of Rs.35,000/- per month. The respondents 1 to 3 also examined one Gopalakrishnan as P.W.2, who deposed that he and deceased jointly carried on business and used to get a sum of Rs.30,000/- as profit and the said profit will increase in future. The respondents 1 to 3 filed Ex.P10/Income Tax form showing that deceased declared his annual income as Rs.1,60,342/-. The Tribunal considering Ex.P10 and that respondents 1 to 3 have not filed any Income Tax returns, did not accept Ex.P10 and considering the materials and evidence of P.W.1 & P.W.2, fixed a sum of Rs.1,00,000/- as notional annual income of the deceased. The deceased was aged 33 years at the time of accident. The Tribunal applied multiplier '17' as per II Schedule of the Motor Vehicles Act, deducted 1/3rd towards personal expenses and granted compensation towards loss of dependency. The Tribunal did not grant any enhancement towards future prospects. The amount fixed by the Tribunal as annual income of the deceased is not excessive and the amounts granted under conventional heads are meagre. 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 for the age 33 years is '16'. The Tribunal applied multiplier '17'. In view of the fact that the Tribunal has not granted any enhancement towards future prospects and amounts awarded under conventional heads are meagre, multiplier '17' applied by the Tribunal is not interfered with.

8.For the above reason, this Civil Miscellaneous Appeal is dismissed and a sum of Rs.11,71,000/- awarded by the Tribunal as compensation to the respondents 1 to 3, along with interest and costs is confirmed. The appellant-Transport Corporation is directed to deposit the award amount 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.1090 of 2010, on the file of the Motor Accidents Claims Tribunal, IV Additional District Judge, Fast Track Court No.II, Coimbatore. On such deposit, the respondents 1 & 3 are permitted to withdraw their respective share of the award amount as per the ratio of apportionment fixed by the Tribunal along with proportionate interest and costs after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. The share of the minor 2nd respondent is directed to be deposited in any one of the Nationalized Banks, till the minor 2nd respondent attains majority. On such deposit, the 1st respondent, being the Mother of the minor 2nd respondent is permitted to withdraw the accrued interest once in three months for the welfare of the minor 2nd respondent. Consequently the connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

krk

To

1.The learned IV Additional District Judge,
Motor Accident Claims Tribunal,
Fast Track Court No.II,
Coimbatore.

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

C.M.A.No.219 of 2014

RR(CO)
GN(03/01/2022)