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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Reserved On : 19.04.2021

Delivered On : 18.06.2021

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.1570 of 2013
and
M.P.(MD)No.1 of 2013

The General Manager,
Tamil Nadu State Transport Corporation Limited,
Karaikudi,
Sivagangai District. .. Appellant/3rd Respondent

Vs.

1.Deivanai
2.Valliappan
3.Kalyani ..1 to 3 Respondent/Petitioners
4.Nallusamy
5.Royal Sundaram Allianz Insurance Co
Rep. By its Manager,
TVS Co operative Buildings,
Madurai Krishnarayar Kulatheru,
Madurai District. ..4 & 5 Respondents /Respondents 1 & 2

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgment and decree dated 02.08.2012 passed in M.C.O.P.No.23 of 2010 on the file of the Motor Accidents Claims Tribunal/Sub Court, Devakottai.

For Appellant : Mr.P.Prabhakaran
For Respondents1 to 3 : Mr.V.Shankarapandian
For 5th Respondent : Mr.S.Srinivasa Raghavan
For 4th Respondent : No Appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award passed in M.C.O.P.No.23 of 2010 dated 02.08.2012, on the file of the Motor Accidents Claims Tribunal/Sub Court, Devakottai.

2.The appellant herein is the third respondent, the respondents 1 to 3 herein are the petitioners and the respondents 4 and 5 herein are the respondents 1 and 2 in the claim petition. The appellant has filed a claim petition in M.C.O.P.No.23 of 2010, claiming compensation for the death of one Palaniyappan in an

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accident that took place on 16.02.2010. The Tribunal has awarded a sum of Rs.5,98,400/- (Rupees Five Lakhs Ninety Eight Thousand and Four Hundred only) as compensation. Against which, the appellant has preferred this appeal.

3.A brief substance of the claim petition in M.C.O.P.No.23 of 2010 is as follows:

On 16.02.2010, when the deceased was travelling as a loadman in a Tata Ace vehicle bearing Registration No.TN-63-K-5585 driven by the driver in a rash and negligent manner and that a Government bus bearing Registration No.TN-63-N-1113 was driven by the driver in a rash and negligent manner came from the opposite direction, both the vehicles dashed against each other. The deceased died due to the accident and he was earning a sum of Rs.4,500/- (Rupees Four Thousand and Five Hundred only) per month at the time of accident. The claimants are the dependants of the deceased and they claimed a sum of Rs.6,00,000/- (Rupees Six Lakhs only) as compensation.

4.The brief substance of the counter filed by the fifth respondent/second respondent is as follows:

The accident occurred only due to rash and negligent driving of the driver of the bus driver. The Tata Ace is a goods vehicle and not passenger vehicle. The policy conditions are violated and the respondent are not liable to pay compensation. The driver of the Tata Ace vehicle drove the vehicle in a moderate speed and the insurance company is not liable to pay compensation.

5.The brief substance of the counter filed by the appellant/third respondent_is as follows:

The bus was driven by its driver in a cautious manner in a moderate speed. The Tata Ace vehicle driven by its driver in a rash and negligent dashed against the bus. The cause of the accident was the rash and negligent driving of the driver of the Tata Ace vehicle and the appellant is not liable to pay any compensation.

6.After trial, the Tribunal has awarded a sum of Rs.5,98,400/- (Rupees Five Lakhs Ninety Eight Thousand and Four Hundred only) as compensation to be paid by the appellant. Against which, the appellant has preferred this Civil Miscellaneous Appeal.

7.On the side of the appellant, it is stated that FIR and chargesheet were only against the driver of the Tata Ace and not against the bus driver. Only based on the oral evidence of P.W.2, the Tribunal has fixed the liability on the side of the appellant. The Tribunal has failed to consider the FIR and the chargesheet and prayed the liability to be fixed on the fifth respondent.

8.It is further stated that the owner of the Tata Ace vehicle and the driver of the Tata Ace were not examined, which is fatal to the case of the claimants. The liability is only on the driver of

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the Tata Ace. While overtaking another vehicle, the Tata Ace vehicle was driven along the right side of the road. The accident took place only due to negligent driving of the driver of the Tata Ace.

9.On the side of the respondents, it is stated that the eye witness has clearly deposed before the Tribunal that the van was driven in a moderate speed. The bus came in a rash and negligent manner. The complaint was given by the driver of the bus. That is why the police registered the case against the driver of the Tata Ace and that the chargesheet was filed against the driver of the Tata Ace. The judgment of the criminal Court will not be binding on the Tribunal and prayed the appeal to be dismissed.

10.The M.V. Report, Ex.P3, Ex.P4 reveals that both the vehicles had damages on the right front side of the vehicles. The FIR and chargesheet were filed against the driver of the Tata ace. It is seen that a reaper in the van got damaged and it speared through the neck of the deceased. The oral evidence is to be considered. The oral evidence of P.W.2 reveals that the van was driven in a moderate speed observing road rules. The driver of the bus gave a complaint against the other vehicle and gave evidence as R.W.1. Except R.W.1, there was no independent evidence on the side of the appellant. Hence, it is decided that the accident took place only due to the rash and negligent driving of the driver of the bus.

11.On the side of the appellant, it is stated that the monthly income of the deceased was fixed as Rs.3,900/- (Rupees Three Thousand and Nine Hundred only), which is excessive. Instead of deducting 50 % of the income of the deceased, the Tribunal has deducted 1/3rd of the income and pray the same to be modified.

12.The income fixed by the Tribunal is actually low. A notional income of Rs.4,500/- (Rupees Four Thousand and Five Hundred only) per month has to be fixed as per "*Praney Sethi*" case. The deceased was bachelor at the time of accident. Hence, 50 % has to be deducted for his own expenses. Hence, after deducting 50%, the loss of income is fixed as Rs.2,250/- (Rupees Two Thousand Two Hundred and Fifty only). Considering the age of the deceased, the multiplier '17' adapted by the Tribunal is correct. The loss of income is calculated as Rs.2250 x12 x 17 = Rs.4,59,000/- (Rupees Four Lakhs and Fifty Nine Thousand only).

13.It is seen that the Tribunal has awarded a sum of Rs.45,000/- (Rupees Forty Five Thousand only) towards love and affection, Rs.20,000/- (Rupees Twenty Thousand only) towards loss of estate and Rs.3,000/- (Rupees Three Thousand only) towards funeral expenses. However, as per the decision taken by the Hon'ble Supreme Court, the claimants are entitled to a sum of Rs.30,000/- (Rupees Thirty Thousand only) towards loss of estate, love and affection and funeral expenses. Hence, the total compensation amount is

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Rs.4,89,000/-(Rupees Four Lakhs and Eighty Nine Thousand only).

14.A perusal of the records reveals that the Tribunal has fixed the rate of interest at 6% and the same has to be enhanced. Hence, it is decided that the claimants are entitled for 7.5% rate of interest for the compensation amount.

15.In the result, this Civil Miscellenaous Appeal is partly allowed. The respondents 1 to 3 are entitled to a sum of Rs.4,89,000/- (Rupees Four Lakhs and eighty Nine Thousand only) as compensation with interest at the rate of 7.5% from the date of the claim petition till the date of realization.

16.The appellant is directed to deposit Rs.4,89,000/- (Rupees Four Lakhs and Eighty Nine Thousand only) with 7.5% interest from date of the claim petition till the date of realization and the amount if not deposited earlier, has to be deposited within a period of 8 weeks from the date of receipt of copy of this order. On such deposit, the claimants are permitted to withdraw their respective shares with proportionate interest after deducting any amount received by them earlier without filing any formal petition before the Tribunal. Excess amount, if any deposited shall be refunded to the appellant. The claimants are not entitled for interest for the default period, if there is any. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

MRN

Note : In view of the present lock down owing to COVID - 19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1.The Motor Accidents Claims Tribunal, Sub Judge,
Devakottai.

2.The Section Officer, (2C)
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

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+1 CC to M/s.V.SANKARAPANDIAN, Advocate (SR-19568[F] dated 18/06/2021)

+1 CC to M/s.S.SRINIVASARAGHAVAN, Advocate (SR-19858[F] dated 22/06/2021)

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KB(13.07.2021) 5P 6C

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