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C.M.A.(MD)No.507 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 22.10.2021

Delivered On : 23.12.2021

CORAM

THE HONOURABLE MRS.JUSTICE R.THARANI

C.M.A.(MD)No.507 of 2018

and

C.M.P.(MD)No.5993 of 2018

Tamil Nadu State Transport Corporation Ltd.,
Having its Regional Office at,
Bye Pass Road,
Madurai
Through its
Managing Director.

... Appellant/1st Respondent

Vs.

1.K.Kavitha

2.K.Preethi

(Second respondent is declared as major
and guardianship of her mother (R1)
is discharged vide Court order dated
05.10.2021 made in C.M.P.(MD)No.7882 of 2021
in C.M.A.(MD)No.507 of 2018 by RTJ)

3.Minor K.Mithunkanna

(Minor 3rd Respondent represented
through his mother/guardian)

... Respondents 1 to 3/Petitioners

4.M.Amirtham

... 4th Respondent/2nd Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the award and decree made in M.C.O.P.No.1389 of 2008 dated 13.04.2016 on the file of the Motor Accident Claims Tribunal/District and Sessions Court, Communal Clash Cases Court, Madurai.

For Appellant : Mr.P.Prabhakaran

For Respondents 1 to 3 : Mr.V.Sakthivel

For 4th Respondent : Mr.K.Mahendran

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JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award passed in M.A.C.O.P.No.1389 of 2008 dated 13.04.2016, on the file of the Motor Accident Claims Tribunal, District and Sessions Court, Communal Clash Cases Court, Madurai.

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2.The appellant herein is the first respondent, the respondents 1 to 3 herein are the claimants and the fourth respondent herein is the second respondent in the claim petition. The respondents 1 to 3 herein have filed a claim petition in M.A.C.O.P.No.1389 of 2008, claiming compensation for the death of one Kishore Babu, in an accident that took place on 26.02.2008. The Tribunal has awarded a sum of Rs.36,92,437/- (Rupees Thirty Six Lakhs Ninety Two Thousand Four Hundred and Thirty Seven only) as compensation. Against which, the appellant has preferred this appeal.

3.Brief substance of the claim petition in M.A.C.O.P.No.1389 of 2008 is as follows:

On 26.02.2008, at about 12 noon, the deceased Kishore Babu was proceeding in a motorcycle bearing registration No.TN-58-M-9393 that belong to his brother keeping the extreme left side of the road. At that time, a bus bearing registration No.TN-58-N-0135 that belong to the first respondent came from the opposite direction in a rash and negligent manner and dashed against the deceased. The deceased sustained injuries and was taken to the Government Rajaji Hospital and then he was taken to Apollo Hospital, Madurai and he succumbed to the injuries on 27.02.2008. He was aged about 34 years at the time of accident. He was a Civil Engineer by profession. He has completed the State Board Technical Education and Training during the year 1994. He has completed M.E. Post Graduate Degree in Public Administration in Madurai Kamaraj University. He was doing civil construction works in and around Madurai District. He was doing business as an insurance agent and he was earning Rs.25,000/- (Rupees Twenty Five Thousand only) per month through the construction work and Rs.5,000/- as an insurance agent. He purchased two properties from his income. The petitioners are his dependants. They claim a sum of Rs.20,00,000/- as compensation.

4.Brief substance of the counter filed by the first respondent therein is as follows:

The manner of the accident is denied. The accident has happened only due to the rash and negligent driving of the deceased. The age, income and occupation of the deceased are all denied. The claim is excessive. The respondent driver drove the bus in a careful and cautious manner. It was the deceased who was rash and negligent. The police Officials refused to register a case on the complaint filed by the respondent. The owner and



insurer of the motorcycle are necessary parties to the petition. The petition is bad for non joinder of the necessary parties. The claim is excessive.

5. Brief substance of the counter filed by the second respondent therein is as follows:

The deceased Kishore Babu used to contribute Rs.10,000/- to this respondent and he supported her financially and morally and that this respondent is entitled to 1/3rd of the award amount. This respondent is not having earning capacity. She was a dependant of the deceased.

6. On the side of the claimants, three witnesses were examined and 25 documents were marked. On the side of the respondents, two witnesses were examined and three documents were marked. After trial, the Tribunal has awarded a sum of Rs.36,92,437/- (Rupees Thirty Six Lakhs Ninety Two Thousand Four Hundred and Thirty Seven only) as compensation to be paid by the first respondent therein. Against which, the appellant has preferred this Civil Miscellaneous Appeal.

7. On the side of the appellant, it is stated that the Tribunal has erred in holding that the driver of the appellant was responsible for the accident. The entire negligence is on the deceased who drove the two wheeler in a rash and negligent manner and he dashed against the bus on the right front side corner and he invited the accident. The award is too excessive and exorbitant and higher than the amount claimed. There is no specific proof for the monthly income of the deceased. The multiplier applied is wrong. The award of compensation under various heads is excessive.

8. On the side of the appellant, it is further stated that the amount claimed in the claim petition is only Rs.20,00,000/- (Rupees Twenty Lakhs only) and the income of the deceased was not proved. The deceased was only a diploma holder not a Civil Engineer. The educational documents are not sufficient to prove the income. The income tax returns were not filed. The sale deed was of the year 1999. The sale amount is only Rs.16,600/-. Another sale deed is of the year 2004 and sale consideration is only Rs.1,00,000/- (Rupees One Lakh only). Mere filing of a pan card is insufficient to prove the income. The accident is of the year 2008. Considering the date of accident, the income fixed by the Tribunal is too excessive.

9. On the side of the respondents 1 to 3, it is stated that the negligence of the bus driver is proved. The bus came along the wrong side of the road. The deceased was an Engineer and an income tax assessee. The monthly income fixed is reasonable. 1/3rd is to be allotted to the 4th respondent.

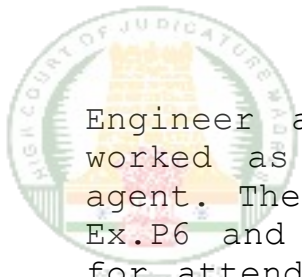


10. On the side of the respondents 1 to 3, it is stated that FIR and chargesheet were registered against the bus driver. FIR was marked as Ex.P1. Chargesheet was marked as Ex.P19. Rough sketch was marked as Ex.P20. The bus came along the wrong side of the road and hit against the two wheeler. The driver of the bus was not examined by the Transport Corporation and only the conductor was examined as a witness. The conductor was mentioned as L.W.4 in the chargesheet. The evidence of P.W.2, eye witness was not shaken. Non examination of the driver of the bus is fatal to the Transport Corporation.

11. The deceased was doing construction work, he worked as a tourist guide and as an insurance agent and he was a member of rotary club. The claimants have filed Ex.P8, Ex.P9, Ex.P17, Ex.P18 to prove the income. The deceased was able to purchase two properties from out of his own income. Ex.P13 and Ex.P14 were copies of the sale deeds. The bank transaction of the deceased was marked as Ex.P10 and Ex.P11. 40% of future prospects has to be added. The respondents restricted the claim in the appeal as Rs.9,00,000/- (Rupees Nine Lakhs only) that means the appellant admitted the liability upto Rs.26,00,000/- (Rupees Twenty Six Lakhs only). After calculating the future prospects, the income has to be assessed as Rs.36,28,800/- (Rupees Thirty Six Lakhs Twenty Eight Thousand and Eight Hundred only). As per **Praney Sethi** case, a sum of Rs.1,60,000/- (Rupees One Lakh and Sixty Thousand only) has to be awarded towards conventional charges. Even though no cross appeal was filed this Court is having the power to enhance the compensation. In support of this contention, a judgment of the Division Bench of this Court in the case of **Oriental Insurance Co. Ltd., v. V.Suriya** reported in **2017 (2) TNMAC 136** and in the case of **Reliance General Insurance Co. Ltd., v. S.Vasanthi** reported in **2017 (2) TNMAC 347** are cited.

12. FIR was marked as Ex.P1, chargesheet was marked as Ex.P19, rough sketch was marked as Ex.P20. P.W.2 was examined as an eye witness. The driver of the bus was mentioned as an accused in the FIR and in the chargesheet. In the rough sketch, the place of occurrence is mentioned as the eastern side of the road. The bus was flying from south to north which means the bus was on the right edge of the road at the time of accident. There was no contra evidence on the side of the respondent. The driver of the bus was not examined. Only the conductor of the bus was examined. Hence, it is decided that the bus driver is responsible for the accident.

13. On the side of the appellant, it is stated that the income of the deceased was not proved by the claimants. On the side of the respondents 1 to 3, it is stated that the deceased was a Civil



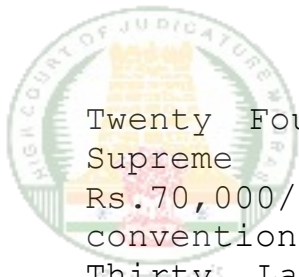
Engineer and that he was doing construction work and that he worked as a tourist guide and that he worked as an insurance agent. The certificate of diploma in Civil Engineer was marked as Ex.P6 and M.A. Certificate was marked as Ex.P7. The certificate for attending training programme for tourist guide was marked as Ex.P8. The card provided for the insurance agent by the United India Insurance was marked as Ex.P9. Certificates of appreciation were marked as Ex.P17 and Ex.P18. The certificate of Chartered Engineer was marked as Ex.P23.

14.On the side of the appellant, it is stated that these documents are only regarding the educational qualifications and these documents, Ex.P6, Ex.P8, Ex.P17, Ex.P18, Ex.P23 are insufficient to prove the income.

15.On the side of the respondents 1 to 3, it is stated that the deceased was doing civil construction work and he was earning a considerable sum and that he was able to purchase two properties. The sale deeds were marked as Ex.P13 and Ex.P14. The solvency certificate issued by the Tahsildar was marked as Ex.P15. The special Term deposit receipt was marked as Ex.P25. The age of the deceased is 34 years. The passbook of the deceased were marked as Ex.P10 and Ex.P11. The pan card was marked as Ex.P12. The acknowledgement for submission of income tax assessment for the period 2015 - 2016 was marked as Ex.P24.

16.The acknowledgement for submission of income tax return is insufficient to prove the income. Though pan card and acknowledgement were produced, the claimants failed to produce the income tax returns filed by the deceased. The transaction in the passbook, solvency certificate issued by the Tahsildar are also insufficient to prove the income. There is no evidence to prove that the deceased worked as a tourist guide and he was getting some income through that job. Except the identity card marked as Ex.P9, there is no other document to prove the income drawn by the deceased as an insurance agent. The deceased is only a diploma holder not a civil Engineer. Considering all these facts, it is decided that the income assessed by the Tribunal is excessive. Hence, the monthly income of the deceased is fixed as Rs.15,000/- (Rupees Fifteen Thousand only).

17.On the side of the respondents 1 to 3, it is stated that the future prospects was not considered by the Tribunal. After adding 40% towards future prospects, the monthly income is fixed at Rs.21,000/- (Rupees Twenty One Thousand only). After deducting 1/4th towards his own expenses, the deceased might have contributed Rs.15,750/- (Rupees Fifteen Thousand Seven Hundred and Fifty only) for his family members. After applying multiplier '16', the loss of income is calculated as Rs.30,24,000/- (Rupees Thirty Lakhs and



Twenty Four Thousand only). As per the dictum of the Hon'ble Supreme Court in **Praney Sethi** case, a sum of Rs.70,000/- (Rupees Seventy Thousand only) is awarded towards conventional charges. In total, a sum of 30,94,000/- (Rupees Thirty Lakhs and Ninety Four Thousand only) is awarded as compensation.

18.Out of the total award amount, the first respondent herein is entitled to a share of Rs.10,94,000/- (Rupees Ten Lakhs and Ninety Four Thousand only), the respondents 2 and 3 herein are entitled to a share of Rs.7,00,000/- (Rupees Seven Lakhs only) each and the fourth respondent is entitled to a share of Rs.6,00,000/- (Rupees Six Lakhs only) as compensation with interest at the rate of 7.5% from the date of the claim petition till the date of realization. The first respondent is entitled for the cost.

19.The appellant herein are directed to deposit the above mentioned amount with 7.5% interest from date of the claim petition till the date of realization with cost and the amount has to be deposited within a period of 8 weeks from the date of receipt of copy of this order. On such deposit, the major claimants are permitted to withdraw their respective share with interest after deducting any amount received by them earlier. On such deposit, the Tribunal is directed to deposit the share of the minor claimant in any one of the Nationalised Banks, in a Fixed Deposit scheme, till they attain majority. The first respondent herein, who is the mother and guardian of the minor claimant, is permitted to withdraw the accrued interest once in three months directly from the bank, only for the welfare of minor. The claimants are not entitled for interest for the default period, if there is any. The claimants are not entitled for interest for the default period, if there is any. Excess amount, if any deposited shall be refunded to the appellant herein. In the result, this Civil Miscellaneous Appeal is **partly allowed**. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

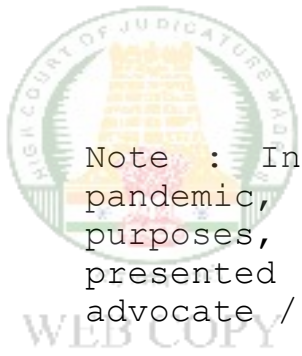
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/ /2022

Sub Assistant Registrar (CS)

MRN

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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 Accident Claims Tribunal/
District and Sessions Judge,
Communal Clash Cases Court, Madurai.

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

+1 CC to M/s.D.BALASUBRAMANIAM, Advocate (SR-40114[F] dated 23/12/2021)

+1 CC to M/s.P.PRABHAKARAN, Advocate (SR-40161[F] dated 23/12/2021)

+1 CC to M/s.K.MAHENDRAN, Advocate (SR-40164[F] dated 23/12/2021)

C.M.A. (MD)No.507 of 2018

Date : 23.12.2021

USK/28.01.2022/7P/7C