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CMA.No.1627 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.06.2022

CORAM:

THE HONOURABLE MS. JUSTICE P.T.ASHA

CMA.No.1627 of 2021

and

CMP No.8551 of 2021

The Managing Director,
M/s. Tamil Nadu State Transport Corporation
Railway Station New Road,
Mumbakonam Ti.Mu.Elaka & Town

...Appellant

vs.

1. Selvi, W.o. Radha
2. Minor. Dheshika, D/o. Radha
3. Minor. Selvamani, S/o. Radha
(Minors rep. by their mother Selvi)

..Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 13.12.2019 made in M.C.O.P. No.114 of 2017 on the file of the learned Subordinate Judge, Motor Accident Claims Tribunal, Mannarkudi.

For Appellant : Mr.D. Venkatachalam

For Respondents : Mr. D. Lakshmipathi



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JUDGMENT

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This Civil Miscellaneous Appeal has been filed by the Transport Corporation challenging the award passed in M.C.O.P. No.114 of 2017 by the Motor Accident Claims Tribunal, Mannarkudi.

2. The facts in brief are as follows:-

2.1. The above claim petition was filed by the wife and children of one Arun Pandian claiming compensation for the death of the said Arun Pandian in a road accident on 26.03.2017.

2.2. It is their case that on the said date Arun Pandian was travelling pillion in a motor cycle driven by one Dinesh when a bus belonging to the appellant herein dashed against the motor cycle, as a result of which, they sustained grievous injuries. The said Arun Pandian later succumbed to his injuries. The respondents/claimants had contended that the said Arun Pandian was working as a Salesman and was earning a monthly income of Rs.10,000/-.



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2.3 The Transport Corporation had filed its counter *inter alia* denying negligence on the side of their driver and contended that the motor cycle in which the deceased was travelling was carrying 3 persons, in total violation of the Act and Rules. They had contended that the compensation claimed was rather on the higher side.

2.4. The Tribunal below, on considering the evidence, came to the conclusion that the driver of the appellant's bus was negligent, as a result of which, the accident has occurred. The Tribunal proceeded to award a compensation of Rs.14,40,800/-. Challenging the same, the Transport Corporation has filed this appeal.

3. Heard the learned counsel on both sides.

4. The records would show that the deceased Arun Pandian was travelling along with two other persons in a motor cycle, which is admittedly against the provisions of the Act as well as Rules. Therefore, they are contributorily negligent. The Tribunal has not considered this factum and has held the Transport to be solely negligent. Therefore, the contributory negligence of 10% has to be imposed on the deceased. The



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records would also reveal that the Tribunal has awarded only a sum of Rs.15,000/- towards compensation under the head of loss of love and affection to the petitioners 2 and 3. This has to be enhanced to Rs.80,000/- (Rs.40,000/- each). **Therefore, the total compensation would stand enhanced by a further sum of Rs.65,000/-**, making the total compensation to a sum of Rs.15,05,800/-. Since the negligence has to be apportioned between the appellants and the Transport Corporation in the ratio 10:90, **the amount payable by the Transport Corporation would be a sum of Rs.13,55,220/-** together with interest @ 7.5 % per annum from the date of petition till the date of deposit. In all other aspects the award of the Tribunal is confirmed.

5. In the result, the Civil Miscellaneous Petition is partly allowed. The compensation of Rs.14,40,800/- awarded by the Tribunal is hereby reduced to Rs.13,55,220/- (Rupees thirteen lakhs fifty five thousand two hundred and twenty only) 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 to the credit of M.C.O.P. No.114 of 2017 on the file of the learned Subordinate Judge, Motor Accident Claims Tribunal, Mannarkudi, along



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with interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment.

On such deposit, the respondents/claimants are permitted to withdraw their respective share of the award amount along with proportionate interest and costs, as per the apportionment made by the Tribunal, after adjusting the amount if any, already withdrawn. If the respondents 2 and 3 have not attained majority, their amounts shall be deposited in Fixed Deposits in any one of the nationalized bank till they attain majority and the first respondent/first petitioner shall be permitted to withdraw quarterly interest from the said amount. The appellant/Transport Corporation is permitted to withdraw the excess amount lying in the deposit to the credit of M.C.O.P. No.114 of 2017, if the entire award amount has already been deposited by them. No costs. Consequently, connected Miscellaneous Petition is closed.

24.06.2022

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Index : Yes/No

Speaking / Non-speaking order



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P.T.ASHA, J.

bga

To,

The Subordinate Judge,
Motor Accident Claims Tribunal, Mannarkudi.

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