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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

C.M.A.No.429 of 2021
and
C.M.P.No.2730 of 2021

The Managing Director
Tamil Nadu State Transport Corporation Limited,
Villupuram Division,
Kanchipuram District. ... Appellant/Respondent

Vs.

1.Jayanthi
2.Mohana
3.Naveena ... Respondents 1 to 3/Claimants

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988 against the Judgment and Decree dated 23.01.2020 passed in MCOP No.107 of 2015 on the file of the Motor Accident Claims Tribunal, (In the VI Court of Small Causes), Chennai.

For Appellant : Mr.K.J.Sivakumar

For Respondents : Mr.R.Varadhakamaraj

JUDGMENT

[Judgment of the Court was delivered by K.KALYANASUNDARAM, J.]

This appeal arises out of the award passed by the Motor Accident Claims Tribunal, (In the VI Court of Small Causes), Chennai in MCOP No.107 of 2015 dated 23.01.2020.

2.This is the case of fatal. The case of the claimants is that on 08.09.2014 at about 22.15 hours, the deceased Bharath was riding a motorcycle on Kanchipuram-Vandavasi main road. When he was nearing TASMACH Shop No.9415, a Government bus bearing Reg.No.TN-21-N-1633 driven by its driver in a rash and negligent



manner, dashed backside of his motorcycle. In the impact, he sustained grievous injuries and died in the hospital. The accident had happened only due to the rash and negligent driving of the driver of the Transport Corporation's bus. The first claimant is the mother and the claimants 2 and 3 are the sisters of the deceased. Hence, they filed claim petition seeking compensation of Rs.20,00,000/-.

3.The appellant/Transport Corporation filed a counter disputing the manner of accident, age, avocation and income of the deceased and its liability to pay the compensation. It was also contended that the claim is excessive and exorbitant.

4.To substantiate the case, the first claimant herself examined as P.W.1. One Viswanathan was examined as P.W.2 and Exs.P1 to Ex.P.13 were marked. On the side of the appellant/Transport Corporation, the Driver of the bus, namely, Elumalai was examined as R.W.1, but no document was marked.

5.The Tribunal, after considering the oral and documentary evidence, held that the driver of the bus was responsible for the accident and awarded compensation of Rs.20,14,000/- to the claimants along with interest at the rate of 7.5% per annum. Assailing the award, the appellant/Transport Corporation has filed the present appeal.

6.The learned counsel appearing for the appellant/Transport Corporation would submit that the Tribunal has erred in concluding that the driver of the appellant Corporation was negligent and caused accident. He would further submit that the Tribunal ought to have considered the conduct of the deceased not wearing the helmet and fixed the contributory negligence. He would further submit that in the absence of any material documents, the Tribunal fixed the monthly income of the deceased as Rs.10,000/-, hence, the appellant is not liable to pay any compensation.

7.Per contra, the learned counsel appearing for the respondents/claimants Mr.K.Varadhakamaraj would submit that the impugned Judgement and Decree awarding the aforesaid compensation is well reasoned and it requires no interference and therefore, this Civil Miscellaneous Appeal is liable to be dismissed.

8.We have considered the rival submission of the learned counsel appearing on either side and perused the materials available on record.



9.It is the contention of the learned counsel appearing for the appellant that the deceased was negligent at the time of accident, hence, the appellant is not liable to pay compensation. A perusal of the records would show that to prove the negligence, the claimant examined one Viswanathan (P.W.2), who is the eyewitness to the accident. On the side of the appellant, though the driver of the bus was examined as R.W.1, in his evidence, he had admitted that he was suspended for the negligent driving at the time of accident. Hence, the Tribunal fixed the negligence on the driver of the bus. We are of the opinion that the negligence fixed by the Tribunal is correct and the same is confirmed.

10.Insofar as the quantum is concerned, it is the case of the claimants that at the time of accident, the deceased was 20 years old bachelor and working as Mason-cum-Bar Salesman and thereby, earning Rs.800/- and Rs.500/- per day, but there is no proof to substantiate the same, hence, the Tribunal has fixed the notional income as Rs.10,000/- per month. Further, the Tribunal by following the decisions of the Hon'ble Supreme Court in the case of National Insurance Company Ltd., vs. Pranay Sethi and others reported in 2017(2) TNMAC 609 (SC) and Sarala Verma and others vs. Delhi Transport Corporation and another reported in 2009 TN MAC 1, applied proper multiplier to award Rs.20,14,000/-. In the considered view of this Court, the award is just and reasonable. We find no reason to interfere with the conclusion reached by the Tribunal. This appeal has no merit.

11.For the foregoing reasons, the Civil Miscellaneous Appeal fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-VIII)

// True Copy //

Sub Assistant Registrar

skn

To

1.The Motor Accident Claims Tribunal,
(In the VI Court of Small Causes), Chennai.



2.The Section Officer,
V.R.Section,
Madras High Court,
Chennai.

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+lcc to Mr.K.J.Sivakumar, Advocate SR.No.20993

+lcc to Mr.K.Varadha Kamaraj, Advocate SR.No.21137

C.M.A.No.429 of 2021

and

C.M.P.No.2730 of 2021

PMK (CO)

CB(28/04/2022)