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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.03.2022

CORAM

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

C.M.A. No.456 of 2022

The Divisional Controller,
KSRTC, Davanagere.

... Appellant/3rd Respondent

Vs.

1.B.Subbarathinam

... 1st Respondent/Petitioner

2.Ananda

3.Karnataka Managing Director,
KSRTC, Bengaluru.

... 2nd & 3rd Respondents/Respondents 1 & 2

(Respondents 2 and 3 remained
exparte in the Court below)

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988 against the judgment and decree dated 20.09.2021 passed in M.C.O.P.No.19 of 2017, on the file of the Motor Accidents Claims Tribunal, Sub Court, Tiruttani.

For Appellant : Mr.T.Thiyagarajan

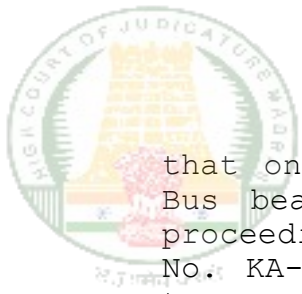
J U D G M E N T

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

Challenging Judgment and Decree passed by the Motor Accident Claims Tribunal, Sub Court, Tiruttani in M.C.O.P.No.19 of 2017, the present appeal has been filed by the KSRTC.

Facts in brief:-

2. This is a case of fatal accident. The claimant is the mother of the deceased Sreenivasulu. The claimant would state



that on 25.12.2015, the deceased travelled as a passenger in a Bus bearing registration KA-17-F-1281. When the said bus was proceeding near Siddapura Gate, another bus bearing registration No. KA-17-F-1632, which came from the opposite direction tried to overtake a car. In that process, the driver of the bus bearing registration No.KA-17-1632 lost his control and dashed against the bus in which the deceased was travelling. In the impact, the claimant's son and 5 other passengers died on the spot. The claimant would further state that the deceased was 34 years old and working as a PG Assistant, and thereby earning a sum of Rs.50,000/- per month. Hence, she claimed compensation of a sum of Rs.2,00,00,000/-.

3. In the counter, the KSRTC denied and disputed the manner of accident, age, avocation and income of the deceased and its liability to pay the compensation.

4. The claim petition was tried by the Tribunal and to substantiate the case, on the side of the claimant P.W.1 to P.W.3 were examined and Ex.P1 to Ex.P6 were marked. On the side of the KSRTC, one Ravi was examined as R.W.1 and Exs.R1 to R4 were marked.

5. The Tribunal, after considering the oral and documentary evidence held that the driver of the bus bearing registration No.KA-17-F-1281 was responsible for the accident and awarded a compensation of Rs.61,63,000/- and directed to pay the said sum along with interest at the rate of 6% per annum on Rs.40,75,104/-. Assailing the award, the KSRTC has filed the present appeal.

6. The learned counsel for the appellant Mr.T.Thiyagarajan would contend that the accident had occurred only due to the rash and negligent of the driver of the bus bearing registration No. KA-17-F-1632 / opposite vehicle and therefore, Tribunal ought to have fixed the entire negligence on the opposite vehicle. It is the submission of the learned counsel that the Tribunal failed to note that except the salary slip for the month of December 2015, no prior salary documents are filed to show that the deceased was drawing a sum of Rs.42,499/-. It is further contended that the award of the Tribunal is exorbitant and excessive and it has to be reduced.

7. Heard the learned counsel for the appellant and perused the materials available on record.

8. It is the contention of the learned counsel for the appellant that the accident had occurred due to the rash and negligence of driver of the opposite vehicle, and therefore, the



entire liability ought to have been fixed on the opposite vehicle. Admittedly, in the case on hand, as observed by the Tribunal, the question of contributory negligence will not arise in this case, as both the vehicles belong to KSRTC.

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9. Insofar as quantum is concerned, it is to be noted that the Tribunal by relying on Ex.P6, determined the monthly income of the deceased at Rs.42,499/-. Since the deceased was a bachelor, deducted half the amount and by applying multiplier '16', arrived the total loss of dependency at Rs.40,75,104/- (Rs.42,449/- / 2 x 12 x 16). The Tribunal has also awarded a sum of Rs.20,37,552/- towards future prospects. Considering the fact that the deceased was working as PG Assistant in Government Higher Secondary School, K.G.Kandigai, and if the deceased would have been alive, he could have got a promotion and could have received the higher salary and hence, a sum of Rs.20,37,552/- awarded by the Tribunal towards future prospects is proper. Further, the Tribunal, awarded a sum of Rs.40,000/- towards consortium; Rs.10,000/- towards funeral expenses; Rs.10,000/- towards transport charges; and Rs.5,000/- towards damages to cellphone, watch and clothes and also deducted a sum of Rs.15,000/- towards interim compensation, which was already granted. In total, the Tribunal awarded a sum of Rs.61,63,000/- along with interest at the rate of 6% per annum on Rs.40,75,104/-. In our opinion, the appellant has not made out any ground to upset the finding reached by the Tribunal, hence the award is hereby confirmed.

10. In the result, the Civil Miscellaneous Appeal is dismissed and the Award and Decree made in M.C.O.P.No.19 of 2017 dated 20.09.2021, passed by the Motor Accident Claims Tribunal, Sub Court, Tiruttani, is confirmed. The rate of interest fixed by the Tribunal remains unaltered. The appellant/ KSRTC is directed to deposit the entire award amount with accrued 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 order. On such deposit, the first respondent / claimant is permitted to withdraw the award amount, less the amount already withdrawn, if any, together with proportionate interest and costs. There is no order as to costs.

Sd/-
Assistant Registrar(CS-I)

//True Copy//

Sub Assistant Registrar

j e r / r n s



To

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

Copy to:

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

+1cc to Mr.T.Thiyagarajan, Advocate, S.R.No.15811

C.M.A. No.456 of 2022

NR (CO)
SU (06/06/2022)