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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2022

Coram

The Hon'ble Mr. Justice C.V.KARTHIKEYAN

C.M.A.No.2013 of 2018

The Managing Director,
State Express Transport Corporation Ltd.,
Pallavan Salai,
Chennai - 600 002.

..Appellant/ 2nd Respondent

vs

1. K.Saraswathi
2.Minor Malathy
3.Minor Kumar
4.R.Subbaiya
5.S.Subbulakshmi
(Both minors are represented by their mother
and guardian the first respondent)

... Respondents/ 1-5 Petitioner

6.V.Shanmugaraj

.. Respondent/ 1st Respondent

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree in MCOP No.201 of 2013, dated 01.04.2016, on the file of the Motor Accidents Claims Tribunal, Perambalur -Principal District Judge, Perambalur.

For Appellant .. Mr.K.S.Suresh

For Respondents .. No Appearance

ORDER

This Civil Miscellaneous Appeal has been filed questioning the compensation granted by the learned Motor Accident Claims Tribunal, Perambalur -Principal District Judge, Perambalur, in MCOP.No.201 of 2013 by judgment and decree dated 01.04.2016.



2. The second respondent in M.C.O.P.No.201 of 2013 on the file of the Motor Accident Claims Tribunal, Perambalur -Principal District Judge, Perambalur is the appellant herein.

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3. Aggrieved by the compensation granted to the legal representatives of one Krishnamoorthi, who sustained fatal injuries in an accident, the appellant Transport Corporation has preferred the present appeal.

4. On 23.10.2012, the said Krishnamurthy was travelling in a Tractor, whileso, a Transport Corporation bus came from behind the tractor and dashed against the same, due to which, he sustained grievous injuries all over his body and was admitted in Govt. Hospital, where he succumbed to the injuries and died.

5. Perusal of the records reveals that deceased Krishnamoorthi was travelling in a Tractor as a loadman by sitting in the Trailer and when the Tractor came near Perambalur-Sengunam Section road on 23.10.2012 at about 2.00 a.m., a Government bus bearing Registration No.TN-01N-5631 came from behind the Tractor, dashed against the same. The evidence reveals that the deceased Krishnamoorthi was thrown out of the Tractor and due to the impact, he sustained grievous injuries and was admitted in the Government Hospital Perambalur where first aid was given to him and thereafter he was referred to the Government Hospital, Trichy and died on the way to Government Hospital, Trichy.

6. Claiming compensation for the death of the deceased, the legal representatives of the said Krishnamurthy filed MCOP.No.201 of 2013 before the Principal District Judge, Perambalur. On the side of the claimants, P.W.1 and P.W. 2 were examined and exhibits Ex.P.1 to Ex.P.8 were marked. On the side of Transpot Corporation, RW1 was marked but no exhibits were marked.

7. The Tribunal after considering the materials and documentary evidence available on both sides, granted Rs.10,96,000/- as compensation along with interest at the rate of 7.5% from the date of petition till the date of realisation. Aggrieved against the quantum of compensation awarded, the appellant Transport Corporation is before this Court by filing the present appeal.

8 Heard the learned counsel for the appellant and considered the materials available on record.



9. Perusal of Ex.P6- postmortem certificate would reveal the multiple injuries sustained by the deceased Krishnamurthy as follows:

1. Dark brown colour abrasions on the top of left shoulder 11cm x 6 cm front of left knee 4cm and 2 cm front of right side of chest 15 cm x 2cm and left side of face 4 cm x 2 cm.
2. Lacerated wounds on the left temporal region of scalp 5cm x 3cm x muscle deep. Left eyebrow 3cm x 1 cm x muscle deep centre of chin 3cm x 1cm x muscle deep and right side of lower jaw 4cm x 1 cm x muscle deep.
3. Fracture of 7th to 12th right side ribs and 5th to 12th left side ribs with surrounding thoracic wall bruising - Dark Red. Thoracic cavity contains fluid blood.
4. Laceration of spleen present peritoneal cavity contains fluid blood.
5. Bruising of kidney - Dark red.
6. Bruising of left frontal, left parietal and left temporal region of scalp and left temporalis muscle.
7. Fissured fracture of left temporal bone.
8. Subdural and sub arachnoid haemorrhage on both cerebral and cerebellar hemisphere.
9. Fracture base of skull - left middle cranial fossa present.

All the above wounds are ante-mortem. No other external, internal or bony wound.

10. It is contended by the learned counsel for the appellant that the deceased had suffered injuries due to his own negligence, since at the late hour in the night, he would have probably slept and fallen down from the Tractor and therefore negligence cannot be attributed to the driver of the Government bus. It is also contended that the tractor suddenly stopped in the middle of the road and brake was applied by the driver of the Government bus. If the deceased was aware and alert, he would not have fallen down from the tractor and the accident could have been avoided. It is also pointed out that the insurance company of the tractor had been exonerated from the entire liability.

11. The tribunal had raised two issues. The first issue which had been framed by the Tribunal is whether the accident



took place due to the rash and negligent driving of the driver of the Government bus/second respondent vehicle. On the basis of the evidence adduced, including that of the driver of the bus who was examined as RW.1, the Tribunal held that the accident had occurred only due to the rash and negligent driving of the driver of the bus. The FIR had also been registered against him. The Tribunal found that the accident took place due to the rash and negligent driving of the driver of the bus.

12. There is no reason to differ from the findings of the tribunal that due to the rash and negligent driving of the driver of the Bus, the deceased fell down from the tractor and sustained serious injuries. The impact should have been caused only due to the rash and negligent and speedy driving of the bus by its driver. It must be kept in mind that the bus crashed into the tractor and owing to that sudden impact, the deceased fell down. If that accident had not happened, the deceased would not have died. Therefore, the finding of the tribunal that the accident was caused only due to the rash and negligent driving of the driver of the bus is not interfered with.

13. with respect to second aspect, i.e., quantum of compensation awarded, it is seen that the Tribunal had determined the monthly income at Rs.6,000/- per month. Thereafter, the multiplier was determined as 16. The deceased was aged about 35 years and proper multiplier had been determined at 16 in accordance with the judgment of the Hon'ble Supreme Court of India in Sarla Verma and others Vs. Delhi Transport Corporation and another in (Civil Appeal No.3483 of 2008).

14. It is also seen that after deducting 1/4th amount of Rs.6,000/- towards personal expenses, the deceased would have been in a position to spend 3/4th to his income for the welfare of his family i.e., Rs.4,500/- . The annual loss of income of the family of the deceased had been calculated as Rs.8,64,000/- (Rs.4,500 x 12 x 16).

15. Further, in respect of the compensation granted under the heads such as loss of consortium; loss of love and affection; loss of love and affectionate father; funeral expenses; transportation charges; damage of clothes, this court find that the amounts awarded by the tribunal under such heads are fair and reasonable amount, hence this court is not interfering with the same..

16. Therefore, the findings of the tribunal are confirmed that the negligence was on the driver of the bus and



that the compensation awarded by the tribunal is fair and just.

17. The amount awarded by the tribunal under the various heads and thereby confirmed by this Court and are tabulated below:

1. Annual loss of income	:	Rs.8,64,000/-
2. Loss of consortium	:	Rs.1,00,000/-
3. loss of love and affection to the 2 nd and 3 rd petitioner:		Rs.1,00,000/-
4. Funeral expenses	:	Rs. 20,000/-
Transporting charges	:	Rs. 10,000/-
5. Damage of clothes	:	Rs. 2,000/-

Total	:	Rs.10,96,000/-

The amount awarded by the tribunal confirmed by this court shall carry interest at the rate of 7.5% interest from the date of petition till the date of realisation.

18. In the result,

- the appeal stands dismissed confirming the judgment and decree passed by the tribunal in MCOP.No.201 of 2013 on the file of Principal District Judge, Perambalur.
- The respondent shall deposit the entire compensation awarded by the tribunal, less the amount, if any, already deposited, along with interest at the rate of 7.5% as awarded by the tribunal within a period of eight weeks from the date of receipt of copy of this order.
- the other aspects relating to apportionment of the compensation should be as per the apportionment made by the tribunal.
- No order as to costs.

Sd/-

Assistant Registrar(CS-V)

// True Copy //

Sub Assistant Registrar

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To

1.Motor Accidents Claims Tribunal,
Perambalur -Principal District Judge, Perambalur.

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+lcc to Mr.K.S.Suresh, Advocate SR.No.11730

C.M.A.No.2013 of 2018

NMI (CO)
CB(25/03/2022)