IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.03.2022

CORAM

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

C.M.A. NO.1914 OF 2020
AND CMP.NOS.14152 OF 2020 AND 4718 OF 2022

The Managing Director,
Tamilnadu State Express Transport Corporation,
(Kumbakonam Division),
Trichy

...Appellant/Respondent

Vs.

1. S.Azhagammal
2. S.Sathishkumar
3. S.Oviya

...Respondents/Petitioner

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, against the judgment and decree dated 07.12.2019 made in MCOP.No.495 of 2016 on the file of the Motor Accident Claims Tribunal/III Additional District Court, Villupuram @ Kallakurichi.

For appellant : Mr.D.Raghu

For respondents
for RR1 to 3 : Mr.D.Ramesh Kumar

J U D G M E N T

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

This appeal is directed against the award passed by the Motor Accident Claims Tribunal/III Additional District Judge, Villupuram @ Kallakurichi in MCOP.No.495 of 2016, dated 07.12.2019.

2. The case of the claimants before the Tribunal was that the husband of the first claimant and the father of the claimants 2 and 3, was travelling in a Tractor bearing

Registration No.TN-15-Z-8464 on 28.06.2016 at 5.30 am. on Trichy - Madurai National Highway. When the vehicle was nearing Karanipatty Pirivu Road opposite to Ponnar Sankar School, the Bus owned by the appellant, bearing Registration No.TN-45-N3008, driven by its driver in a rash and negligent manner, rammed the Tractor. As a result, the deceased sustained fatal injuries and died on the spot.

3. It is the further case of the claimants that the deceased was 49 years old at the time of the accident and he was a building contractor and earning Rs.50,000/- per month. Hence, they are entitled for a compensation of Rs.50,00,000/-.

4. The appellant/Transport Corporation contested the claim petition by filing a detailed counter statement, disputing each and every allegations made in the claim petition.

5. It is the specific case of the appellant that the driver of the Tractor, all of a sudden applied sudden brake and stopped the Tractor without proper signal and in spite of the best efforts taken by the driver of the Bus, it had hit against the Tractor. Hence, the appellant cannot be made liable to pay compensation.

6. Before the Tribunal, the claimants, in order to prove their case, examined PW2 as an eye-witness to the incident. A copy of the FIR, which was marked as Ex.P1, reveals that a criminal case was registered against the driver of the Bus. Ex.P3 is the Motor Vehicle Inspector's Report. On the side of the appellant, one Ramesh was examined as RW1. The Tribunal, after analysing the evidence adduced by the parties, came to the conclusion that the driver of the Bus was negligent at the time of the accident. The Tribunal further held that the driver of the Bus ought to have driven the Bus with utmost care and caution and had that been done, this accident itself could have been averted. Hence, we find no infirmity in the order of the Tribunal with regard to negligence, hence, it is confirmed.

7. Insofar as quantum is concerned, Ex.P2, Post-mortem Certificate shows that the deceased died at the age of 50 years. PW1 in her evidence had stated that her deceased husband was a contractor and earning Rs.50,000/- per month. But in the cross-examination she had admitted that no proof was available to show that he was doing contract work. The claimants filed Ex.P6 Income Tax Returns for the assessment year 2014-15 to show that the income of the deceased was Rs.4,78,064/-. After deducting income tax, the Tribunal had taken income as Rs.37,338/- and also added, 10% for future prospects. The main grievance of the appellant is that the income cannot be fixed on the basis of Ex.P6 for the reason that PW1 had categorically admitted that

there is no supporting document available with her. We find force in the above submissions of the learned counsel for the appellant.

8. Perusal of Ex.P6 reveals that the deceased had not paid any income tax, but filed only Income Tax Returns. It further reveals that he was an income tax assessee, however, no previous Returns were produced before the Tribunal.

9. In the light of the above facts and to meet the ends of the justice, we fix the notional income of the deceased as Rs.20,000/- and adding 10% for future prospects, arrive at the the income of the deceased as Rs.22,000/- [20,000 + 2,000]. After deducting 1/3 for his personal expenses, the contribution to the family comes to Rs.14,700/-. If proper multiplier 13 is applied, the Loss of Income comes to Rs.22,93,200/- [14,700 x 13 x 12].

10. Considering the number of claimants, we award Rs.1,20,000/- towards Consortium and Filial Consortium by awarding Rs.40,000/- to each of the claimants. Further, a sum of Rs.15,000/- is awarded towards Funeral Expenses and another sum of Rs.15,000/- towards Loss of Estate. In total, the claimants are entitled to Rs.24,43,200/-, which is rounded off to Rs.24,44,000/- along with interest at the rate of 7.5% per annum from the date of claim petition till the date of realization. Thus, the total compensation payable to the claimants is re-calculated and tabulated below:

S. No.	Heads under which the amount is awarded by the Tribunal	Amount awarded by the Tribunal in Rs.	Amount awarded by this Court in Rs.
1.	Loss of Dependency	42,01,600	22,93,200
2.	Loss of Consortium	40,000	40,000
3.	Funeral Expenses	15,000	15,000
4.	Loss of Love and Affection	30,000	
5.	Loss of Filial Consortium	-	80,000
6.	Loss of Estate	-	15,000
	Total	42,86,600	24,43,200 rounded off to 24,44,000

11. The sum of Rs.42,86,600/- awarded by the Tribunal is reduced to Rs.24,44,000/-. Out of the award amount, the first claimant is entitled to Rs.10,44,000/- and the claimants 2 and 3 are entitled to Rs.7,00,000/- each. The Insurance Company is directed to deposit the above modified award amount to the credit of the claim petition with proportionate interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants 1 and 2 are permitted to withdraw the award amount as apportioned above, less the amount already withdrawn, if any, together with proportionate interest and costs. Insofar as the minor claimant 3 is concerned, her share shall be deposited by the Tribunal in any Fixed Deposit Scheme in any one of the Nationalised Banks and it shall be renewed periodically till she attains majority and the interest accrued thereon shall be withdrawn by the first claimant/mother once in three months.

12. With the above directions, the appeal is partly allowed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

pvs

To

1. The III Additional District Court,
   Motor Accident Claims Tribunal,
   Villupuram @ Kallakurichi

+1cc to Mr.D.Raghu, Advocate(TNSTC), S.R.No.20706
+1cc to Mr.D.Ramesh Kumar, Advocate, S.R.No.20573

C.M.A. No.1914 of 2020

SSN(CO)
PM/29/04/2022