



C.M.A.No.612 of 2020

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.12.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MS.JUSTICE R.N.MANJULA

C.M.A.No.612 of 2020
and
C.M.P.No.3736 of 2020

The Managing Director,
Karnataka State Road Transport Corporation,
“Transport House” Central Office, K.H.Road,
Shanthi Nagar, Bengaluru – 27.

...Appellant

Vs.

1.Nithiya
2.Minor Gokul
rep. By his next friend mother Nithya
3.Pavayee
4.Chendrayan
5.Siddappa Poojari
6.State of Karnataka,
The District Collector, Mysuru District,
Karnataka.

...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 02.11.2018 passed in M.C.O.P.No.46 of 2016 on the file of the Motor Accident Claims Tribunal (Special District Judge), Erode.



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For Appellant : Mr.T.Thiyagarajan
For Respondents : Mr.C.Munusamy for R1 to R4
R6-served-No Appearance
R5 – No such person

J U D G M E N T

(Judgment of the Court was made by R.SUBRAMANIAN, J.)

The appellant / Transport Corporation is aggrieved by the award of Rs.43,76,000/- as compensation for the death of one Ramesh in a motor accident that occurred on 30.08.2015 has come up with the Civil Miscellaneous Appeal seeking enhancement.

2.According to the claimants, who are the parents, widow and son of the deceased that while the deceased was travelling as a passenger in an Autorickshaw at about 5.45 a.m. in H.D.Kote main road near Mysore, the bus belonging to the appellant Corporation, which came in the opposite direction being driven in a rash and negligent manner hit against the Autorickshaw resulting in, instantaneous death of the said Ramesh.

3.The claim was resisted by the Corporation contending that it



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was the driver of the autorickshaw whose negligence caused to the accident and there was no negligence on the part of the driver of the bus. It is also contended that the quantum of compensation claimed at Rs.1,10,00,000/- is on the higher side.

4.Before the Tribunal, the driver of the bus was examined as R.W.1. The 1st claimant was examined as P.W.1, the co-passengers were examined as P.W.2 and P.W.3 and the Chartered Accountant was examined as P.W.4. The Tribunal, on an overall assessment of the evidence on record concluded that the negligence is on the part of the bus driver. The Tribunal took into account the fact that the First Information Report was lodged against the bus driver and the sketch that was filed along with the First Information Report demonstrated that the auto was on the extreme left of the road and it was the bus, which had crossed over to the other side and hit the autorickshaw. On the said findings, the Tribunal held that there was no negligence on the part of the autorickshaw driver.

5.On the quantum, the Tribunal relied upon Exs.P12, the



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statement of accounts, Ex.P17, the back accounts hold by the deceased and the income tax statement, which was marked as Ex.P14. The evidence of the Chartered Accountant was also taken into account. Considering the documents that was filed, the Tribunal took monthly income of the deceased at Rs.25,000/-, it added future prospects at 40% and deducted $\frac{1}{4}$ towards personal expenses. Thus, the Tribunal arrived at the monthly loss of income at Rs.23,450/-. Applying a multiplier of 15, the Tribunal arrived at the loss of income at Rs.42,21,000/-. The Tribunal awarded a sum of Rs.40,000/- towards loss of consortium, Rs.75,000/- towards loss of love and affection, Rs.15,000/- towards funeral expenses and Rs.25,000/- towards transportation, arrived at a total compensation of Rs.43,76,000/-. Thus, the total compensation arrived to Rs.43,76,000/-.

6.Mr.T.Thiyagarajan, learned counsel appearing for the Transport Corporation would vehemently contend that the Tribunal was erred in concluding that the First Information Report was based on the statement of the co-passenger, who was also relative to the deceased. He would categorize the same as an intrusted statement. He would also fault the



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Tribunal for fixing the monthly income at Rs.25,000/- merely on the basis of the income tax statement, which was filed after the death of the person.

7.Contending contra, Mr.C.Munusamy, learned counsel appearing for the claimants would submit that the very manner in which the accident had occurred would demonstrate negligence on the part of the bus driver. He would claim that fixing of Rs.25,000/- is too low and we should enhance the compensation relying upon the judgment of **National Insurance Company Limited Vs. Pranay Sethi and others** reported in (2017) 16 SCC 680. We have considered the rival submissions.

8.The Tribunal taken into account the First Information Report as well as the sketch to conclude that the negligence was on the part of the driver of the bus. We have also perused the First Information Report and the sketch and the evidence of R.W.1 / driver of the bus. The fact that R.W.1 had not chosen to lodge a complaint against the auto driver also arms significance. We find from the First Information Report and the sketch that the auto was on the left side of the road, which is the correct side. The bus



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had deviated into the wrong side of the road and hit against the auto.

Therefore, we do not think that the Tribunal could be faulted for having concluded that the negligence was on the part of the bus driver. No doubt, R.W.1, the driver of the bus had claimed that the auto had hit the bus but, he had not preferred any complaint against the driver of the auto and his evidence could be termed as intrusted testing evidence. Hence, we confirm the conclusion of the Tribunal regarding negligence.

9.On the quantum, we find from the income tax statement and the bank passbook that the income of the deceased was fluctuated. The Tribunal on a fair assessment had taken the income at Rs.25,000/- per month and adopts a multiplier of 15 considering the age of the deceased. The deduction has also been fairly applied at 1/4. We therefore, see no reason to interfere with the quantum of compensation awarded, though Mr.C.Munusamy would contend that there is some scope for enhancement. Taking into account the uncertainty as well as the fluctuation in the income of the deceased, we are unable to persuade ourselves to enhance the compensation. This Civil Miscellaneous Appeal fails and it is accordingly,



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dismissed. No costs.

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10.It is stated that 50% of the compensation awarded with proportionate interest has been deposited to the credit of the Tribunal and the minors share has been deposited in the Nationalized Bank. There will be direction the Transport Corporation to deposit the balance amount within a period of twelve weeks from the date of receipt of a copy of this order and the major claimants are also permitted to withdraw their share of the amount so deposited. The apportionment of the compensation as fixed by the Tribunal is also confirmed.

(R.S.M.,J.) (R.N.M.,J.)
14.12.2022

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Internet:Yes/No

Index:Yes/No

Speaking/Non-speaking order



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R.SUBRAMANIAN, J.
and
R.N.MANJULA, J.

KKN

To:-

The Motor Accident Claims Tribunal,
Special District Court,
Erode.

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and
C.M.P.No.3736 of 2020

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