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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON :30.03.2022

PRONOUNCED ON :06.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A(MD)No.57 of 2016

The Managing Director,
Tamil Nadu State Transport Corporation,
Trichy Division-II,
Trichy :Appellant/First Respondent

.vs.

1.K.Tamil Selvi :First Respondent/First Petitioner

2.Muthuraj :Second Respondent/Second Petitioner

3.Gowtham :Third Respondent/Third Petitioner

4.Periyasamy :Fourth Respondent/Fourth Petitioner

5.Rajkumar :Fifth Respondent/Second Respondent

6.The Branch Manager,
National Insurance Company Limited,
Broadway,
Chennai-108 :Sixth Respondent/Third Respondent

(Respondents 2 and 3 are declared as major and the guardianship of R1 is discharged vide order of this Court made in C.M.P(MD)No.1111/2016 in C.M.A(MD)No.57 of 2016, dated 28.06.2017)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and award made in M.C.O.P.No.113 of 2004, dated 1.2.2012, on the file of the Motor Accidents Claims Tribunal/Sub-Court, Sivakasi.

For Appellant :Mr.D.Sivaraman
For Respondents 1 to 4 :Mr.K.P.S.Palanivel Rajan
For Respondent-6 :Mr.A.S.Mathilalagan

JUDGMENT

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This Civil Miscellaneous Appeal is directed against judgment and award made in M.C.O.P.No.113 of 2004, dated 1.2.2012, on the file of the Motor Accidents Claims Tribunal/Sub-Court, Sivakasi.

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2.The transport Corporation is the appellant herein challenging the award passed in M.C.O.P.No.113 of 2004, on the point of negligence as well as the quantum of compensation.

3.The respondents 1 to 4 have filed a claim petition before the Tribunal claiming compensation for the death of the husband of the first respondent in the road traffic accident that had happened on 16.05.2004 in the evening 4.10. p.m. When the deceased Kannan had borrowed the vehicle from the second respondent, which is a car bearing Registration No. TN 05 L 4365, coming from Kovilpatti to Chennai. At that time, near Kallupalam, the bus owned by the appellant Transport Corporation came in a rash and negligent manner and dashed against him and thereby the persons travelled in the car have also sustained injury and subsequently her husband Kannan died in the accident.

4.To show the negligence on the part of the driver of the transport Corporation one of the injured in the accident, who travelled in the car, was examined as P.W.2 namely, Mariappan, who had deposed that the bus was driven by its driver in a rash and negligent manner and dashed against the car. In order to buttress the stand of the respondents, the driver of the bus was examined as R.W.1 and rough sketch was marked as Ex.R1 and Motor Vehicle Inspector's Report as Ex.E2 and another Motor Vehicle Inspector's Report was marked as Ex.R3 and Ex.R4 is the copy of the Criminal Court judgment, wherein, the learned Magistrate has passed an order of acquittal acquitting R.W.1, the bus driver.

5(a)On a perusal of Ex.R1 rough sketch, I find that the scene of crime is mentioned that at the middlle of the road. It remains to be stated that it is the specific evidence of R.W.1 the bus driver that on seeing the car coming from the opposite direction he has applied the brake and brought the bus to the leftern side mud road and that point of time, the car dashed against the bus in the mud road portion. Had the version of R.W.1 is accepted to be true, there is no possibility of the scene of Crime as shown as middle of the road and hence I find that all is not well with Ex.R1. Further more, the version of R.W.1 is not the true reflection of state of affairs. He had applied brake on seeing the car came and dashed against him. If it is so, the car should have came to halt in the nearby portion. However, it was thrown away from the very extreme extent on the eastern side and hence I find that R.W.1 vesion is tainted with self serving staterment to save his skin from the departmental proeedings.

5(b)Furthermore, merely because an order of acquittal has been passed by the learned Magistrate, the judgment of acquittal by the Criminal Court has no binding upon the Tribunal, since the burden of broof in the Criminal Court is as that of proof of charge beyond reaosnable doubt. While the burden of proof in Motor Accident Claims before the Claim Tribunal is to proof of the case of the

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claim petitioners as to the preponderance of probability. It remains to be stated that the Conductor of the bus is not examined. Some of the injured passengers in the bus were also not examined and therefore, I find that the version of R.W.1 is totally unacceptable to rely upon, for the reasons stated supra. The reasons of P.W.2 is reliable. He is the injured who had travelled in the car. Accordingly, I hold that the accident has taken place due to the rash and negligent driving on the part of the driver of the appellant/Transport Corporation bus and not by the driver of the car and hence, the similar finding arrived at by the Tribunal is hereby confirmed.

6(a).On the point of quantum of compensation, the claim petitioners have not filed any document to prove the age. The learned counsel appearing for the claim petitioners insisted upon the age mentioned in the Post-mortem report. On perusal of the Income Tax Return filed by the claim petitioner as Ex.P8 Ex.P9, Ex.P10 and Ex.P11, the date of birth of the deceased is mentioned as 3.7.1969. The date of the accident is 16.5.2004 and hence on the date of the accident, he is 35 years old. Accordingly, the multiplier of '16' is adopted as per ***Sarla Verma's case***. On perusal of Ex.P13, the annual income is Rs.96,135/- However, Ex.P13 for the year 2003-2004 is filed and Ex.P10 is the balance sheet. As per Ex.P16, the annual income is Rs.1,48,382/-. However, I find that this document has been filed before the Income Tax Authority, as per Department seal is on 16.6.2008, that is just before the trial and much after the accident and hence, the same cannot be considered for determination of the annual income and hence I have no hesitation to hold that the document has been created for the purpose of claiming compensation after the accident, just few days before the giving evidence before the Tribunal. Therefore, I find that Ex.P16 is to be eschewed from consideration.

6(b)On a combined reading of the Income Tax return papers in Ex.P5, Ex.P6, Ex.P7, Ex.P9 and Ex.P10, I find that the average inome for the month is not exceeding Rs.8500/- and it is accordingly, fixed at Rs.9000/- Since the deceased was aged 36 years, future prospects is to be taken at the rate of 40%. Therefore Rs.9,000/- + Rs.3,600/-=Rs12,600x12x16x3/4=18,14,400/-.The first Petitioner, being wife, is entitled for loss of consortuim at Rs.40,000/- and respondents 2 and 3 are each entitled to Rs.40,000/- totally Rs.80,000/- towards parental consortium and the fourth respondent being the parent, is entitled for Rs.40,000/- and totally all the four respondents are entitled Rs.1,60,000/- Funeral expenses at Rs.15,000/-, Loss of Estate at Rs.15,000/-. Accordingly, the total compensation is reduced from Rs.26,67,500/- to Rs.20,04,400/-with interest at the rate of 7.5%.pa.

7.Accordingly, the Civil Miscellaneous Appeal is partly allowed, reducing the compensation from Rs.26,67,500/-to Rs.20,04,400/- with interest at the rate of 7.5% pa., from the date

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of claim petition till the date of realisation. The appellant Transport Corporation is directed to deposit the modified award amount with proportionate accrued interest and costs,less the award amount, if any already deposited, within a period of 12 weeks from the date of receipt of a copy of this order. On such deposit being made, since the respondents 2 and 3 are also declared as major, all the claimants 1 to 4 are permitted to withdraw their share in the award amount with proportionate accrued interest and costs,as per the ratio of apportionment made by the Tribunal, less the award amount, if any, already withdrawn, by filing necessary application before the Tribunal. If, in case, the appellant/Transport Corporation has deposited the entire award amount, as ordered by the Tribunal, the Tribunal is directed to refund the excess award amount,if any, with proportionate accured interest on filing necessary application before the Tribunal. No costs.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar(CS)

vsn

To

The Sub Judge,
The Motor Accidents Claims Tribunal,
Sivakasi.

COPY TO:-

The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1 CC to M/s.K.P.S. PALANIVELRAJAN, Advocate (SR-16791[F] dated 06/04/2022)

+1 CC to M/s.D. SIVARAMAN, Advocate (SR-16991[F] dated 06/04/2022)

+1 CC to M/s.A.S. MATHIALAGAN, Advocate (SR-17476[F] dated 08/04/2022)

JUDGMENT MADE IN
C.M.A(MD)No.57 of 2016
06.04.2022

ss(CO)
GC(26.04.2022) 4P 7C

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