IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.06.2023

CORAM

THE HON'BLE MRS. JUSTICE J.NISHA BANU
AND
THE HON'BLE MR. JUSTICE D.BHARATHACHAKRAVARTHY

C.M.A.No.360 of 2021
and
C.M.P.No.2410 of 2021

The Managing Director,
Tamil Nadu State Transport
Corporation (Kumbakonam) Ltd.,
Railway Station New Road,
Kumbakonam- 612 001 ... Appellant

Vs.

1. Mumtaj
W/o Jaheer Hussain

2. Mohamed Fizal,
S/o Jaheer Hussain

3. Najumudeen,
S/o Jaheer Hussain

4. Sabeetha Bee,
W/o Abdul Wahab ...Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 28.07.2020 made in M.C.O.P.No.83 of 2017 on the file of the Motor Accident Claims Tribunal/ Special Sub Judge, Cuddalore.

For Appellant : Mr.D.Raghu

For Respondent : Mrs.Ramya V.Rao

JUDGMENT

This Civil Miscellaneous Appeal is filed by the Insurance Company aggrieved by the award of the Tribunal dated 28.07.2020, in and by which, in respect of the claim of compensation of a fatal accident, a total compensation of Rs.40,34,500/- was awarded by the Tribunal. Aggrieved by the quantum, the appellant Corporation is before this Court.

2. Heard Mr.D.Raghu, learned counsel for the appellant and Mrs.Ramya V.Rao, learned counsel for the respondent.

3. Learned counsel for the appellant would submit that in this case, the income is taken at Rs.25,000/- on the basis of the assessment and other particulars of one Mumtaz Trading and Industries. Admittedly, all the said documents produced before the Tribunal in Exs.P8 to P17, stood in the name of the first claimant/wife and not the deceased/husband. Inspite of specific cross examination, they were not able to produce any document to connect the husband with the said

concern or that the husband is working in any capacity or that he was managing the affairs of the said concern. Therefore, on the mere basis of the documents relating to Mumtaz Trading and Industries, the income was fixed. In that view of the matter, the Tribunal erred in taking the said income and only a notional income could have been taken and therefore, the award needs interference.

4. Per contra, the learned counsel appearing on behalf of the claimants would submit that inspite of specific cross examination by the appellant Insurance Company, P.W.1 had specifically denied that her husband was working only as a mechanic and not running Mumtaz Trading and Industries. Between the husband and wife, the concern was run in the name of the wife but however, the same was managed only by the deceased/husband. From the very answer in the cross examination that after his death, Mumtaz Trade and Industries is not being run would itself go to show that the concern which was in the business of extracting oil from cashewnuts was being run only by the deceased and therefore, the said income, that too, being only a reasonable sum of Rs.25,000/- was rightly taken by the Tribunal and the quantum is arrived.

5. We have considered the rival submissions made and perused the

material records of the case. We have specifically gone through the cross examination of P.W.1 Mumtaz also. We find force in the submissions made by the learned counsel for the respondent.

6. The cross examination of P.W.1 has clearly brought out that Mumtaz Trading and Industrial was no more running after the death of the first claimant's husband. Secondly, she has categorically denied that her husband was only working as a mechanic and answered positively that it was her husband who was running the entire business. Thirdly, we also find that in the teeth of the said categorical case by P.W.1/ wife that the business is run only by the husband and the evidence let in by them, when no contrary evidence has been let in to disprove the same, we hold that the Tribunal was right in holding that the deceased was only running the said business and accordingly, taking the said business as the income of the deceased.

7. In that view of the matter, we do not find any error in the award of the Tribunal in taking the monthly income at Rs.25,000/-. Therefore, the Civil Miscellaneous Appeal is without any merits. Accordingly, the Civil Miscellaneous Appeal is dismissed. The balance compensation, if any, to be deposited within a period of six weeks from the date of receipt

of a copy of this order and the claimants are permitted to withdraw their entire sum as apportioned by the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

(J.N.B,J.) **(D.B.C, J.)**
30.06.2023

Index : Yes / No
Internet : Yes
vsi

To

The Motor Accident Claims Tribunal/
Special Sub Judge,
Cuddalore.

J. NISHA BANU, J.
and
D.BHARATHA CHAKRAVARTHY,J.

vsi

C.M.A.No.360 of 2021

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