IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.02.2023

CORAM

THE HONOURABLE Mr.JUSTICE **R.SUBRAMANIAN**
and
THE HONOURABLE Mrs.JUSTICE **K. GOVINDARAJAN THILAKAVADI**

C.M.A.No.1635 of 2020
and CMP.No.10590 of 2020

1. Kumudha
2. Rajendiran
3. Sathyahasan
4. Suruthihasani

... Appellants

Vs.

1. The Managing Director,
   Puducherry Road Transport Corporation,
   No.4, Aiyyanar Koil Street,
   Rajanagar, Puducherry.
   (set exparte before the Tribunal)
2. The New India Assurance Co., Ltd.,
   Motor Third Party Claims,
   No.232, Bombay Mutual Building,
   6th Floor, N.S.C.Bose Road, Chennai-600 001.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 02.08.2019 and made in M.A.C.T.O.P.No.6559 of 2018 on the file of the Motor Accidents Claims Tribunal, Chief Judge Court of Small Causes, Chennai.

For Appellant : Mr.F.Terry Chella Raja

For Respondents
for R1 : Ex-parte before the Tribunal
for R2 : Ms.A.Salomi

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J U D G M E N T

[Judgment of the Court was delivered by **R.SUBRAMANIAN, J**]

The parents and siblings of the deceased Kamalahasan are on appeal challenging the award of Rs.10,75,000/- for the death of the said Kamalahasan in a road accident that took place on 06.10.2018.

2. According to the claimants, while the said Kamalahasan was riding a motorcycle bearing Registration No.TN 07 CM 8554 and proceeding towards Pondicherry from Chennai on the East Coast Road, the bus bearing Registration No.PY01 BV 5186 owned by the first respondent and insured with the second respondent, was driven in a rash and negligent manner and hit against the deceased, as a result of which the deceased sustained fatal injuries and succumbed to the said injuries on the spot. Stating that the negligence on the part of the bus driver was the cause for the accident and claiming that the deceased was employed as a driver in the year 2018, the claimants sought for a compensation of Rs.80,00,000/-.

3. The Insurance Company resisted the claim contending that there was no negligence on the part of the driver of the bus and it was the deceased, who had contributed to the accident by his own rash and negligent driving. The compensation claimed was termed as excessive and salary and other particulars are denied.

4. Before the Tribunal, the first petitioner was examined as PW-1 and one Velan (Eye witness) was examined as PW-2, Exs.P1 to P16 were marked. On the side of the respondents, one L.Selvaraj, who was examined as RW1 and the Authorisation Letter given to him was marked as Ex.R1. On consideration of the evidence on record, the Tribunal concluded that the accident occurred due to the rash and negligent driving of the driver of the bus. Since the Insurance Company is not an appeal, the conclusion of the Tribunal on the question of negligence cannot be disturbed. On the quantum, the Tribunal took monthly income of the deceased as Rs.10,000/-, added 40% to future prospects, applied a deduction of 50% towards personal expenses (since the deceased was a bachelor), adopted the multiplier of 17 and arrived at the loss of dependency at Rs.10,20,000/-. It awarded a sum of Rs.15,000/- and Rs.40,000/- towards

funeral expenses and loss of Love and affection. Thus, the total compensation worked out as Rs.10,75,000/-.

5. Mr.F.Terry Chella Raja, learned counsel appearing for the appellant would submit that the assumption of income at Rs.10,000/- for an accident that occurred in October 2018 is very minimal. Pointing out the minimum salary drawn by the last Grade servant in the Government service, the learned counsel would submit that the Tribunal should have taken it as Rs.20,000/- per month. He would also point out that the evidence of RW1-Investigator, who had deposed that during investigation, the father of the deceased claimed that the deceased was working as a mechanic.

6. Contending contra, the learned counsel for the Insurance Company would submit that the statement of the Investigator cannot be taken as a proof of income.

7. Even if we are agree with the contention of the learned counsel for the Insurance Company that the evidence of the Investigator alone would not constitute the proof of income, we find that the fixation of notional income at Rs.10,000/- for the accident that had occurred on 06.10.2018 is too low. As rightly pointed out by the learned counsel for the appellants that even a last

Grade servant in the Government service was earning around Rs.20,000/- at the relevant point of time. Even non muster role employees employed by PWD were drawing about Rs.17,000/- to Rs.18,000/- during the relevant period. However, considering the waggeries of employment, we fix the notional income at Rs.15,000/- per month. If we add 40% to the future prospects, the monthly income would be Rs.21,000/-, deducting 50% and applying multiplier of 17, the total loss of dependency would be Rs.21,42,000/-. The Tribunal has awarded only Rs.40,000/- for Love and affection. There are four claimants viz., the parents and 2 unmarried younger siblings. The parents would each be entitled to Rs.40,000/- towards loss of Love and affection and the 2 unmarried siblings would, atleast, be entitled to Rs.20,000/-. The award of the Tribunal towards funeral expenses of Rs.15,000/- is confirmed and another sum of Rs.15,000/- towards loss of estate is awarded. Therefore, the total compensation works out is Rs.22,92,000/-. The same is rounded off to Rs.23,00,000/-. The interest granted by the Tribunal at 7.5% is confirmed. The compensation granted is apportioned as follows:-

1. The unmarried siblings would each be entitled to Rs.1,50,000/-.
2. The parents would be entitled to Rs.10,00,000/- with proportionate interest.

8. The Insurance Company is directed to deposit the enhanced compensation within a period of eight(8) weeks with interest at 7.5% per annum from the date of the claim petition till the date of payment. On such deposit, the claimants are permitted to withdraw the amount as apportioned.

9. In fine, this Civil Miscellaneous Appeal is partly allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

(R.S.M.J.,) (K.GT.J.,)
09.02.2023

Index : No

Speaking order: Yes

Neutral Citation Case :No
kmi
To
1. The Chief Judge Court of Small Causes,
   Motor Accidents Claims Tribunal,
   Chennai.

2. The Section Officer,
   VR Section High Court,
   Madras.

R.SUBRAMANIAN, J.
and
K. GOVINDARAJAN THILAKAVADI, J.

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