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C.M.A.No.3500 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.11.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.3500 of 2019

1.P.Pushpam
2.P.Sumathi
3.P.Sundari
4.P.Muthaiya

... Appellants

Vs.

1.K.Rajendran
2.The Managing Director
Tamilnadu State Transport Corp. Ltd.,
Dindigul Division,
Dindigul.

... Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to enhance the compensation amount awarded in the judgment and decree dated 12.07.2018 made in M.C.O.P.No.1011 of 2014 passed by the learned Motor Accidents Claims Tribunal / Special Subordinate Judge for MCOP Cases, Coimbatore.

For Appellants : Mr.AK.Gopalan

For Respondents : R1 – No Appearance
Mr.Murali Vinodh for R2



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This appeal has been filed against the judgment and decree dated 12.07.2018 passed by the Motor Accidents Claims Tribunal / Special Subordinate Judge for MCOP Cases, Coimbatore, in M.C.O.P.No.1011 of 2014.

2.The learned counsel appearing for the appellants submitted that on 08.03.2014 at about 3.30 p.m., the deceased Pandi was travelling as a pillion rider along with his friend one Arasangam to a Temple near Allikundam in the said Arasangam's TVS XL Motor Cycle bearing Registration No.T.N.58-AB-7324 in Usilampatti to Peraiyur Road from North to South direction near Allikundam Vilakku, Perumal Kovil and the said Arasangam slowed the motorcycle for a speed breaker. At that time, a bus bearing Registration No.TN-57-N-1877 came in a rash and negligent manner in the same direction and hit on the rear portion of the motorcycle, due to which, the deceased Pandi lost his life.

3.The learned counsel appearing for the appellants further submitted that thereafter, the wife, daughters and son of the deceased Pandi / appellants filed claim petition before the Motor Accidents



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Claims Tribunal, claiming compensation of Rs.15,70,000/-. However, the Tribunal awarded only a sum of Rs.50,000/- as compensation to the claimants. The learned counsel further submitted that the appellants have filed this appeal questioning the negligence aspect and for enhancement in compensation.

4.The learned counsel appearing for the appellants further submitted that the deceased was pillion rider and one Arasangam drove the motorcycle and the bus belonging to the second respondent came in a rash and negligent manner in the same direction and hit on the rear portion of the motorcycle, due to which, the accident happened, however, the Tribunal arrived at the conclusion that both side not proved the case and fixed no fall liability on the side of the appellants is not sustainable one.

5.The learned counsel appearing for the appellants further submitted that P.W.1 is the wife of the deceased and she is not the eye witness. P.W.1 is not aware of the manner in which the accident happened, however, she marked copy of F.I.R. as Ex.P1 and copy of the charge sheet as Ex.P6 and copy of rough sketch as Ex.P7. All those documents prepared by the law enforcing agency shows that the



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accident happened due to the rash and negligent driving of the driver of the bus belonging to the second respondent. The first respondent was examined as R.W.1 before the Tribunal and he did not dispute the facts contained in F.I.R., charge sheet and rough sketch.

6.The learned counsel appearing for the appellants further submitted that P.W.1 marked the documents available with her. It is for the second respondent to disprove the F.I.R., charge sheet and rough sketch. However, the second respondent has not marked any document before the Tribunal. Without any document and evidence, the Tribunal fastening the negligence on the part of the deceased is not sustainable one.

7.The learned counsel appearing for the second respondent Transport Corporation submitted that no eye witness was examined on the part of the claimants, thereby, based on the evidence let in by R.W.1, the Tribunal fixed no fall liability on the part of the deceased. Further, the income of the deceased was not proved before the Tribunal, thereby, the Tribunal awarded only a sum of Rs.50,000/- for no fall liability and hence, the impugned judgment warrants no interference.



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8.Heard the learned counsel appearing for the appellants claimants as well as the learned counsel appearing for the second respondent Transport Corporation and perused the materials available on record.

9.Admittedly, the deceased traveled as a pillion rider in the motorcycle bearing Registration No.T.N.58-AB-7324 driven by one Arasangam. Admittedly, the vehicle belonging to the second respondent came behind the motorcycle and dashed on the rear portion of the motorcycle, due to which, the deceased Pandi sustained fatal injuries and lost his life. Merely because the claimants have not examined any eye witness, that does not mean the Tribunal has to fix no fall liability as against the deceased.

10.It is equally un-disputed fact that F.I.R., charge sheet and rough sketch are not conclusive proof. However, in the absence of any oral evidence, the Tribunal ought to have arrived at the conclusion based on the criminal case records. In the charge sheet, the driver of the vehicle belonging to the second respondent has been arrayed as accused and the same was not dis-proved. Hence, fixing no fall



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liability on the part of the deceased is not sustainable one. Hence, this Court is inclined to fix the negligence as against the 1st respondent driver and 2nd respondent is liable to pay compensation.

11.The accident took place during the year 2014. The Hon'ble Apex Court in Syed Sadiq case fixed a sum of Rs.6,500/- as notional monthly income of the vegetable vendor in the year 2008. P.W.2 in his deposition has deposed that the deceased earned a sum of Rs.15,000/- per month as Master in a Hotel. Hence, applying the yardstick fixed by Hon'ble Apex Court, this Court fix a sum of Rs.10,000/- as the notional monthly income of the deceased per month. The deceased would have spent $\frac{1}{4}$ of the amount towards his personal expenses and hence if $\frac{1}{4}$ of the amount is deducted from Rs.10,000/-, the loss of income per month would be Rs.7,500/-. The deceased was aged 40 years at the time of death and the correct multiplier to be adopted is 15. Adopting multiplier 18, the actual loss of income to the claimants comes to Rs.7,500/- X 12 X 15 = Rs.13,50,000/-. Further, this Court awards 25% of the loss of income towards future prospects i.e., Rs.3,37,500/- [25% of Rs.13,50,000/- = Rs.3,37,500/-], a sum of Rs.1,60,000/- [Rs.40,000/- each] towards loss of love and affection, a sum of Rs.15,000/- towards funeral



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expenses and a sum of Rs.15,000/- towards loss of estate.

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12.The appellants/ claimants are entitled to a sum of Rs.18,77,500/- as compensation along with interest at the rate of 7.5% interest from the date of claim petition till the date of deposit, out of which, the first appellant is entitled to a sum of Rs.6,77,500/-, the second appellant is entitled to a sum of Rs.4,00,000/-, the third appellant is entitled to a sum of Rs.4,00,000/- and the fourth appellant is entitled to a sum of Rs.4,00,000/-.

13.The first respondent is the driver of the Transport Corporation Bus. Hence the second respondent Transport Corporation is vicariously liable to pay compensation to the appellants/ claimants. The second respondent Transport Corporation is directed to deposit the entire compensation amount awarded by this Court, i.e., Rs.18,77,500/-, along with interest at the rate of 7.5% interest from the date of claim petition till the date of deposit, before the Motor Accident Claims Tribunal, within a period of eight weeks from the date of receipt of a copy of this judgment, less the amount if any, already deposited.



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14. On such deposit being made, the appellants/ claimants are permitted to withdraw their respective shares as apportioned by this Court, along with proportionate interest, after deducting the amount already withdrawn, if any, on making proper and necessary application before the Tribunal. The appellants/ claimants shall not be entitled to any interest for the period of delay, if any, in filing the appeal. The appellants/ claimants are directed to pay the requisite Court fee for the enhanced compensation amount, if required. The Motor Accidents Claims Tribunal / Special Subordinate Judge for MCOP Cases, Coimbatore, shall disburse the enhanced amount upon production of certified copy showing proof of payment of Court fee by the appellants/ claimants.

15. The civil miscellaneous appeal is allowed. The judgment and decree passed in M.C.O.P.No.1011 of 2014 dated 12.07.2018 by the Motor Accidents Claims Tribunal / Special Subordinate Judge for MCOP Cases, Coimbatore, is modified to the above extent. No costs.

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Index: Yes/ No

Speaking Order: Yes/ No

NCC: Yes/ No

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To

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1.The Motor Accidents Claims Tribunal /
Special Subordinate Judge for MCOP Cases, Coimbatore.

M.DHANDAPANI,J.
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