



THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

C.M.A.No.2752 of 2023
and
C.M.P.No.25376 of 2023

The Managing Director,
Tamilnadu State Transport Corporation,
Salem Division Limited.

...Appellant

Vs.

1.Maragatham
2.Minor. Swetha
3.Minor. Gunal
(Minors rep. by next friend / mother Maragatham)

...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree passed in MCOP.No.400 of 2018 passed by the Motor Accident Claims Tribunal, III-Additional District Court, Villupuram @ Kallakurichi on 14.09.2022.

For Appellant : Mr.D.Nitin

For Respondents : Ms.M.Adhishree for Mr.N.Manokaran



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J U D G M E N T

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

The Transport Corporation is on appeal, aggrieved by the award of the Motor Accident Claims Tribunal, Kallakurichi granting a sum of Rs.45,91,764/- as compensation for the death of one Murugesan, who died in a road accident that occurred on 28.05.2018.

2.According to the claimants, on the fateful day at about 6.50p.m., when the deceased was riding his motor cycle bearing Registration No.TN-32-AV-0178 from Chinnasalem bus stand towards Salem near Royal Hardwares Shop, the bus belonging to the Corporation bearing Registration No.TN-30-N-0906 driven in a rash and negligent manner by its driver hit against the motor cycle and as a result, the deceased sustained greivous injuries and died on the spot, the helmet broke into pieces. Contending that the deceased who was employed as a Field Officer in the Tamil Nadu Electricity Board (now known as TANGEDCO) was drawing a salary of Rs.27,622/- and on his death, the claimants who are the wife and two minor children are left without any financial support, they sought for compensation of Rs.50,00,000/-.



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3.The claim was resisted by the Insurance Company contending that the accident did not occur in the manner suggested by the claimants. It was contended that the deceased, who was riding the motor cycle in a rash and negligent manner came and dashed against the front right corner of the bus. Since according to the learned counsel appearing for the Corporation, the accident happened due to the rash and negligent driving of the deceased himself, the Corporation cannot be made liable for payment of compensation. The salary claimed and the details of employment were also denied.

4.Before the Tribunal, the 1st claimant was examined as P.W.1. P.W.2 and P.W.3 were examined to prove the manner in which the accident took place. Exs.P1 to P9 were marked on the side of the claimants. A copy of the First Information Report was marked as Ex.P1 and the pay slip of the deceased was marked as Ex.P4. On the side of the Corporation, driver of the bus was examined as R.W.1 and the Exs.R1 and R2 were marked. R2 is the copy of the judgment in the criminal prosecution launched against the driver of the bus.



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5.The Tribunal, on consideration of the evidence on record found that the accident occurred due to the rash and negligent driving by the driver of the bus. On the quantum, the Tribunal took the monthly salary at Rs.27,622/- as evidenced by Ex.P4. Since the deceased was aged about 40 years, it added 50% towards future prospects and arrived at the annual salary after deduction of income tax at Rs.4,97,196/-. After deducting 1/3rd towards personal expenses it applied a multiplier of 15 and arrived at the total loss of dependency at Rs.49,71,960/-. The Tribunal, awarded Rs.40,000/- towards loss of consortium to the 1st claimant and Rs.50,000/- towards loss of love and affection. A sum of Rs.25,000/- and Rs.15,000/- were awarded towards funeral expenses and loss of estate respectively. Thus, in all, the total compensation worked out to Rs.51,01,960/-. The Tribunal deducted 10% for non-production of the driving license of the deceased and arrived the compensation payable at Rs.45,91,764/-. Aggrieved, the Corporation is on appeal.

6.We have heard Mr.D.Nitin, learned counsel for the appellant / Corporation and Ms.M.Adhishree for Mr.N.Manokaran, learned counsel for the respondents.



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7.The learned counsel for the appellant / Insurance Company would vehemently contend that the Tribunal was erred in disbelieving the evidence of the driver of the bus. He would submit that the Tribunal erred in relying upon the evidence of P.W.2, who had stated that he heard the sound and thereafter, looked at the direction and saw the deceased lying on the road and his helmet having been broken into pieces. Therefore, according to the learned counsel, P.W.2 would not qualify as an eye-witness and therefore, the Tribunal was not right in relying upon the evidence of P.W.2. A perusal of the award shows that the Tribunal has not relied upon the evidence of P.W.2. Upon rejecting the evidence of R.W.1 as an exorbitant version, the Tribunal has gone by the First Information Report, which indicts the driver of the bus. We thererefore, see no merit in the submission of the learned counsel regarding the conclusion on negligence.

8.On the quantum, the learned counsel for the appellant would submit that adoption of 50% towards future prospects is not justified. The grant of 50% towards future prospects is according to the judgment of the Hon'ble Surpeme Court in *National Insurance Company Limited Vs. Pranay Sethi and Others* reported in (2017) 16 SCC 680. The deceased



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was employed as a Field Officer in the Tamil Nadu Electricity Board. The said employment is permanent in nature and therefore, the adoption of 50% towards future prospects cannot be faulted. We find that the award granted on the ground of love and affection is less by a sum of Rs.30,000/- but the Tribunal has granted Rs.25,000/- towards future personal expenses, which is on the higher side. Hence, we do not see any reason to interfere with the award of the Tribunal. This Civil Miscellaneous Appeal therefore, fails and it is accordingly, dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(R.S.M.,J.) (N.S.,J.)
09.11.2023

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Internet:Yes

Index:No

Speaking

Neutral Citation :No



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To:-

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The Motor Accident Claims Tribunal,
II-Additional District Court,
Kallakurichi.



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and
N.SENTHILKUMAR, J.

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