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C.M.A.No.1296 of 2022
and C.M.P.No.9419 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.08.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

C.M.A.No.1296 of 2022
and C.M.P.No.9419 of 2022

The Managing Director,
Tamil Nadu State Transport
Corporation Ltd.,
Villupuram Division,
3/137, Salamedu,
Valudha Reddy Post,
Villupuram – 605 602.

... Appellant

Versus

1.Panjali
2.Kanniyappan
3.Solai

... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, seeking to set aside the judgment and decree dated 19.02.2021 passed in M.C.O.P.No.17 of 2015, by the Motor Accident Claims Tribunal, Tindivanam.

For Appellant	: Mr.T.Chandrasekaran
R1	: Died
For R2 & R3	: Ms.C.Neethimozhi



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JUDGMENT

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This appeal has been filed by the appellant/Transport Corporation challenging the compensation awarded by the Tribunal in M.C.O.P.No.17 of 2015 dated 19.02.2021.

2.The claim petition was filed stating that on 20.07.2015, at about 2.30 p.m., while the deceased was riding his two wheeler bearing Registration No.TN 16 A 3387 near Tindivanam Police Station, Tindivanam to Villupuram main road with proper care, the bus bearing Registration No.TN 32 N 4032 came in a rash and negligent manner and rammed against the two wheeler; that the deceased was thrown out; sustained injuries and admitted in the hospital; that due to the head injury and other grievous injuries, he died on 21.07.2015. Thus, the respondents are entitled for compensation.

3.The appellant/Transport Corporation filed counter denying all the averments made in the claim petition and stated that the deceased drove his two wheeler at high speed in wrong side. Hence, he was not able to control his speed and thus the accident occurred. Further, the



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deceased was not wearing helmet and did not possess driving license at the time of accident and hence, the appellant/Transport Corporation is not liable to pay any compensation. In any case, the compensation claimed is excessive and prayed for dismissal of the claim petition.

4.Before the Tribunal, the respondents/claimants examined four witnesses and marked Ex.P.1 to Ex.P.13. On the side of the appellant/Transport Corporation neither witness was examined nor document was filed.

5.The Tribunal after considering the oral and documentary evidence held that the accident occurred due to the rash and negligent driving by the driver of the bus belonging to the appellant/Transport Corporation. However, the Tribunal had fixed 15% contributory negligence on the deceased since he was not wearing helmet and not holding driving license at the time of accident and directed the appellant to pay the compensation of Rs.15,58,560/- to the respondents.



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6. Aggrieved over the award passed by the Tribunal, the appellant/Transport Corporation has filed the present appeal challenging the quantum of compensation.

7. Learned counsel for the appellant/Transport Corporation submitted that the Tribunal had erroneously fixed the age of the deceased as 28 years in the absence of any evidence to establish his age. The Tribunal relied upon post-mortem certificate for fixing the age, which is not accurate. Learned counsel for the appellant further submitted the award of compensation and the notional income fixed by the Tribunal is excessive and hence, prayed for reduction in the compensation amount awarded by the Tribunal

8. Pending claim petition the 1st respondent-mother of the deceased died and the respondents 2 and 3 - brother and sister of the deceased were impleaded as legal representatives of 1st respondent.



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9.Learned counsel for the respondents 2 and 3 per contra submitted that the respondents/claimants have stated the age of the deceased in the claim petition which was also confirmed by the post-mortem certificate. Therefore, the Tribunal was right in computing the loss of income by fixing the age of the deceased as 28 years. The deceased was working as mason and was earning more than Rs.25,000/- per month. Considering the year of accident, the Tribunal was right in fixing the notional income at Rs.12,000/- per month. The Tribunal had also fixed 15% contributory negligence on the deceased for not wearing helmet and not holding driving license. Therefore, the compensation awarded by the Tribunal is just and reasonable and no interference is called for. Hence, prayed for dismissal of the appeal.

10.Though the learned counsel for the appellant questioned the finding of the Tribunal as regards the negligence, he was unable to point



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out any error or any infirmity in the finding of the Tribunal fixing the entire negligence on the driver of the bus belonging to the appellant/Transport Corporation. The Tribunal had taken into consideration Ex.P1-F.I.R, Ex.P5-rough sketch and Ex.P6-final report, besides the evidence of P.W.1 to hold that the accident took place on account of rash and negligent driving by the driver of the bus belonging to the appellant/Transport Corporation. Further, the finding of the Tribunal fixing 15% contributory negligence for not wearing helmet and holding valid license is also justified. This Court is of the view that the said finding is justified and no interference is called for.

11.The only question involved in the instant appeal is whether the compensation awarded by the Tribunal is just and reasonable?

12.As regards compensation, the Tribunal had fixed Rs.12,000/- per month as notional income of the deceased for the accident that took place in the year 2015 and the respondents have established that the deceased was working as mason. Considering the age, avocation and the



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year of accident, the Tribunal was justified in fixing the notional income.

The Tribunal had considered the age of the deceased as 28 years. The claim petition as well as post-mortem certificate reveals the age of the deceased as 28 years. That apart, the age of the siblings and the mother of the deceased probabilise the version of the respondents. Therefore, the Tribunal was right in fixing the age of the deceased as 28 years and awarding compensation. Therefore, the award of compensation is just and reasonable and hence the appeal is liable to be dismissed.

13.In view of the above, this Civil Miscellaneous Appeal is dismissed and the compensation awarded by the Tribunal is confirmed together with interest at 7.5% per annum from the date of petition till the date of deposit. The appellant/Transport Corporation is directed to deposit the entire compensation awarded by the Tribunal along with interest and costs, less the amount already deposited, if any, within a period of eight (8) weeks from the date of a receipt of copy of this Judgment. On such deposit, the respondents are permitted to withdraw their respective shares as per the apportionment fixed by the Tribunal, less the amount already withdrawn, if any. No costs. Consequently,



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connected miscellaneous petition is closed.

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rst

Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

SUNDER MOHAN, J.

rst

To:

1.The Motor Vehicle Accident Tribunal,
Tindivanam.

2.The Section Officer,
V.R. Section,
High Court, Madras.

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