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CMA.No.22 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.01.2023

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THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CMA.No.22 of 2023
and CMP.No.270 of 2023

The Managing Director,
Metropolitan Transport Corporation Ltd.,
(Chennai Division),
Anna Salai, Chennai.

..Appellant

Vs

1.Vignesh Kumar

2.Vijesh Kumar

..Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988, to set aside the judgment and decree dated 09.03.2022 made in MCOP.No.3660 of 2017 on the file of the Motor Accident Claims Tribunal, IV Small Causes Court, Chennai.

For Appellant

: Mr.Anton Dhanasekaran

JUDGMENT

The Civil Miscellaneous Appeal is filed as against the judgment and decree 09.03.2022 made in MCOP.No.3660 of 2017 on the file of the Motor Accident Claims Tribunal, IV Small Causes Court, Chennai, thereby awarded a sum of Rs.17,33,328/- as compensation.



2. The appellant is the respondent and the respondents are the claimants.

The respondents filed a Claim Petition stating that on 07.03.2017 at about 11.00 a.m., when their mother, who was travelling in MTC bus bearing Reg.No.TN-01-N-7668 towards Velacherry and she ready to get down at Murugan Kalyana Mandapam opposite to bus stand, at that time, the driver of the bus had carelessly taken the bus in a rash and negligent manner and as such, she fell down and sustained head injuries. Immediately, she was taken to Excellent Care hospital and admitted as in-patient and thereafter, she was taken to Soorya Hospital for higher treatment. However, she died on 14.03.2017. At the time of accident, she was working as Clerk in JE Tax Consultation and she was drawing a sum of Rs.12,000/- per month as salary. Claiming a compensation, the claimants filed the MCOP.

3. Resisting the same, the appellants herein filed a counter affidavit stating that the accident had not taken place because of the rash and negligent driving of the bus driver but it only because of the negligence on the part of the deceased viz., she fell down from the running bus and sustained grievous injuries and died. The age of the deceased also was not proved and she was not working anywhere and the salary receipt must be disproved.



4. On the side of the claimants they had examined PW1 to PW3 and marked Exs.P1 to P20 and on the side of the appellant RW1 was examined and Ex.R1 was marked.

5. On perusal of oral and documentary evidence, the Tribunal fixed the entire liability on the respondents since the accident had occurred only due to the rash and negligent driving of the bus driver and awarded a sum of Rs.17,33,500/- as compensation. Challenging the same, the present civil miscellaneous appeal.

6. The learned counsel for the appellant would submit that the age of the deceased was not proved by the claimants. Mere filing of the death certificate would not be enough to prove the age of the deceased. In fact, she was admitted in Excellent Care hospital and thereafter, she was shifted to Soorya Hospital wherein, she had been treated for seven days and as such, the death was not caused due to the injuries sustained in the accident. That apart, she carelessly fell down from the bus due to her negligence and as such the driver of the appellant's bus is no way responsible for the accident. No eye witness was properly examined by the claimants to prove the negligence on the part of the bus driver. He would further submit that though FIR was registered as against



the bus driver it does not mean that the accident had occurred only due to the rash and negligent driving of him. The future prospectus was also construed at 25% which is highly excessive in nature and not valid in the eye of the law.

7. On perusal of records revealed that on 07.03.2017, while the deceased was travelling in the bus owned by the appellant herein bearing Reg.No.TN.01-N-7668 towards 100 feet road, Velacherry and when she was ready to get down at Murugan Kalyana Mandapam bus stop, the driver of the bus stopped the bus and had immediately taken the bus in a rash and negligent manner. Due to which, she fell down and sustained head injuries and immediately, she was taken to Excellent Care hospital and treated as in-patient. Thereafter, she was shifted to Soorya Hospital for further treatment and she died on 14.03.2017. In order to prove the negligence on the part of the driver of the bus, the claimants had examined PW3. She is one of the eye witness and she categorically deposed that only because of the rash and negligent driving of the driver of the bus, the deceased fell down from the bus and sustained grievous injuries on her head. In so far as the age of the deceased is concerned, her death certificate was marked as Ex.P5 and it revealed that she was 47 years old, at the time of accident.



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8. Though the claimants marked the salary receipt as Ex.P18, the Tribunal had not taken it into consideration to fix the monthly salary of the deceased since it was not directed through her employer. In the given circumstances, in order to maintain the family consistency of herself and her two sons, the claimants, she must have been employed somewhere. The Tribunal had fixed only a sum of Rs.10,000- as notional income. It is also seen that the husband of the deceased pre-deceased her and therefore, she was the only bread winner of her family. Her future prospectus was rightly calculated at 25% adopted multiplier method for the age proof of 40 to 50 and rightly awarded just a fair compensation of Rs.17,33,500/-. Therefore, this Court finds no infirmity or illegality in the order passed by the Court below.

9. Accordingly, the civil miscellaneous appeal stands dismissed by confirming the award. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

12.01.2023

Speaking/Non-speaking order

Index : Yes/No

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G.K.ILANTHIRAIYAN.J.



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To

The Motor Accident Claims Tribunal,
IV Small Causes Court,
Chennai.



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