IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.10.2023

CORAM :

THE HONOURABLE MR. JUSTICE **M. DHANDAPANI**

C.M.A.No.245 of 2017
and
Cros.Obj.No.99 of 2021
and
C.M.P.No.1493 of 2017

C.M.A.No.245 of 2017

The Managing Director,
Tamil Nadu State Transport Corporation (Coimbatore) Ltd.,
37, Mettupalayam Road,
Coimbatore – 641 043. ... Appellant / 2nd Respondent

Vs.

1.Pushpa

2.Minor Tamil Selvan
Rep. by Guardian Mother Pushpa

3.Selvi ... Respondents 1 to 3 / Petitioners

4.Muthusamy ... 4th Respondent / 2nd Respondent

Cros.Obj.No.99 of 2021
in C.M.A.No.245 of 2017

1.Pushpa

2.Minor Tamil Selvan
Rep. by Mother/Next friend Pushpa

3.Selvi ... Cross Objectors

Vs

1.The Managing Director,
Tamil Nadu State Transport Corporation (CBE) Ltd.,
37, Mettupalayam Road,
Coimbatore – 641 043.

2.Muthusamy ... Respondents
[R2 set exparte before the Tribunal, hence notice may be dispensed with for R2 in this cross appeal]

Prayer in C.M.A.: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 29.02.2016 made in M.C.O.P.No.90 of 2012 on the file of the Motor Accident Claims Tribunal, The Additional Subordinate Court, Tirupur.

Prayer in Cros.Obj.: Cross Objection filed under Order 41 Rule 22 of the Civil Procedure Code, against the judgment and decree made in M.C.O.P.No.90 of 2012 on the file of MACT/ Additional Sub Court at Tiruppur, dated 29.02.2016.

For Appellant	:	Mr.A.Sundaravadanam
For Cross Objectors	:	Mr.Ma.P.Thangavel
For R4 in appeal & R2 in cross objection	:	Notice dispensed with vide order 08.06.2023.

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COMMON JUDGEMENT

The Transport Corporation has filed the above appeal challenging the award passed by the Motor Accident Claims Tribunal/Additional Subordinate

Court, Tirupur in M.C.O.P.No.90 of 2012 dated 29.02.2016 on the grounds of negligence and quantum of compensation.

2. The Cross Objection has been filed by the claimants seeking an enhancement of the compensation.

3. The claimants are the wife, son and mother of the deceased Rajkumar. On 20.11.2011 at about 03.35 p.m., the deceased travelled as a pillion rider in the motorcyle of his friend Shahul Hameed bearing Regn.No.TN-39-AS-6602 at P.N.Road, Tirupur in North to South direction, at that time, near Pushpa Theatre Bus Stop, a Transport Corporation bus came from behind the deceased vehicle in a rash and negligent manner and dashed against the two wheeler, as a result of which, he sustained grievous injuries and died on the spot. Thereafter, the claimants, who are the legal heirs of the deceased filed a claim petition claiming a sum of Rs.12,00,000/-, which was restricted to a sum of Rs.10,00,000/-, for the death of the deceased in M.C.O.P.No.90 of 2012.

4. Before the Tribunal, the claimants examined three witnesses viz., P.W.1 to P.W.3 and marked 8 documents viz., Ex.P.1 to Ex.P.8. On the side of the respondents, they have examined one witness viz., R.W.1 and no documents

were marked. After adjudication, the Tribunal had partly allowed the petition and awarded compensation in a sum of Rs.15,21,000/- with 7.5% interest, directing the second respondent/Transport Corporation to pay the compensation to the claimants. Aggrieved by the said order, the Transport Corporation has preferred the appeal and the claimants have filed the cross objection seeking enhancement.

5. The learned counsel appearing for the appellant submitted that the driver of the motorcycle driven the same in a rash and negligent manner and dashed against the transport corporation's bus, thereby the deceased lost his life. However, the Tribunal had fastened the entire negligence as against the driver of the appellant/transport corporation's bus, which is wholly unsustainable. Further, he submitted that the claimants have not filed any proof with regard to the income of the deceased before the Tribunal. However, the Tribunal by fixing a sum of Rs.6,000/- as notional income, awarded compensation towards loss of income, which is on the higher side and so also the other heads, which same requires interference. Accordingly, he prays for allowing the appeal and dismissal of the cross objection.

6. Per contra, the learned counsel appearing for the cross objectors submitted that, at the time of death, the deceased was doing Banian cloth business and supplied the same to the R.K.Knits India (P) Ltd., Tiruppur and he has huge material transaction to the tune of nearly Rs.7,00,000/- per annum and the same was received in Form No.16A issued by the deductor, namely R.K.Knits India (P) Ltd. before the Tribunal through P.W.3/Income Tax Officer. However, without considering the same, the Tribunal fixed a sum of Rs.6,000/- as monthly income, which is on the lower side and the same requires to be enhanced. Accordingly, he prays for dismissal of the appeal and allowing the cross objection.

7. Heard the learned counsel appearing for the appellant and the learned counsel appearing on behalf of the cross objectors and also perused the materials available on record.

8. There is quarrel that the deceased died as a result of the accident, in which the appellant's bus was involved. P.W.2, who is an eye witness to the accident, had deposed that due to the rash and negligent driving of the driver of the bus, the accident had happened. In order to disprove the same, the appellant has not produced any evidence. The Tribunal, considering the placed before it

has rightly come to the conclusion that, it was due to the rash and negligent driving of the driver of the appellant's bus, the accident had happened and therefore, it is the duty of the appellant to compensate the claimants. Therefore, on that point, no interference is warranted and the finding recorded by the Tribunal is confirmed.

9. Now, coming to the question of quantum of compensation awarded by the Tribunal, even though it is claimed by the claimants that the deceased was earning a sum of Rs.15,000/- at the time of death, however, no material document was produced before the Tribunal except filing of tax assessment for the AY 2011 – 2012 in order to ascertain the income of the deceased. In the absence of any document relating to the income of the deceased, the Tribunal had fixed the monthly income of the deceased at Rs.6,000/- and awarded a sum of Rs.12,96,000/- towards loss of income, which is just and reasonable and the same does not warrant any interference.

10. Further, this Court is of the view that the the compensation awarded by the Tribunal under the other heads are also just and reasonable, which cannot be interfered with. Therefore, the award passed by the Tribunal is in no way perverse, arbitrary or unreasonable and the same deserves to be sustained.

11. In the result, the Civil Miscellaneous Appeal is dismissed and the cross objection is also dismissed. The award passed by the Motor Accident Claims Tribunal, The Additional Subordinate Court, Tirupur in M.C.O.P.No.90 of 2012 dated 29.02.2016 is confirmed. The appellant/Transport Corporation is directed to deposit the award amount as awarded by the Tribunal to the credit of M.C.O.P.No.90 of 2012 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less the amount if any already deposited, within a period of four weeks (4) from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the amount as per the apportionment of the Tribunal, directly to the bank account of the cross objectors/claimants through RTGS within a period of two (2) weeks thereafter. No costs. Consequently, the connected miscellaneous petition is also dismissed.

12.10.2023

Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation Case : Yes / No
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M.DHANDAPANI, J.,

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To

1.The Motor Accident Claims Tribunal, Additional Subordinate Court, Tirupur.
2.The Section Officer, V.R.Section, High Court, Madras.

C.M.A.No.245 of 2017

12.10.2023