



WEB COPY



CMA No.951 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.04.2023

CORAM :

THE HONOURABLE MR. JUSTICE A.A. NAKKIRAN

C.M.A No.951 of 2017

and

CMP No.4768 of 2017

Metropolitan Transport Corporation Ltd.,
Rep. by its Managing Director
No.2, Pallavan House
Chennai.-2.

... Appellant

Versus

1.A.Elankodi
2.A.Hariharan(Minor)
3.A.Sasidharan (Minor)
(2nd and 3rd respondents are
minors, Rep. by their mother and
next friend of 1st appellant)
4.Komaleswari

...Respondents

This Civil Miscellaneous Appeal is filed against the award and decree dated 27.06.2014, made in M.C.O.P.No.1519 of 2009 on the file of the Motor Accident Claims Tribunal/Special Sub Judge I, Court of Small Causes, Chennai.

For Appellant

: Mr.S.S.Swaminathan

For Respondent

: Mr.K.Varadakamaraj



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J U D G M E N T

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This appeal has been preferred by the Transport Corporation against the award and decree dated 27.06.2014, passed by the Motor Accident Claims Tribunal/ Special Sub Judge, Court of Small Causes, in MCOP No.1519 of 2009.

2. As per the claim petition, on 19.05.2009 at about 05.30 hours, at Dovton Bridge, Purasawakkam, when the deceased Arun Prasadh was travelling along with his friend in a motor cycle bearing Registration No.TN-22 BD 2209, the driver of the appellant/Transport Corporation bearing Registration No.TN 01 N 7798 came in a rash and negligent manner and hit against the deceased and his friend. In the impact, he sustained fatal injuries and died on the spot.

3. The Tribunal on appreciation of both oral and documentary evidence came to the conclusion that the accident occurred only due to the rash and negligent driving of the driver of the vehicle and hence, directed the Insurance Company to pay a sum of Rs.22,14,000/- with interest at the rate of 7.5% per annum from the date of claim till the date



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of realisation as compensation to the claimants.

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4. Questioning the negligence and the quantum of award, the appellant/Transport Corporation has come forward with this appeal.

5. The learned counsel for the appellant/Transport Corporation contended that the Tribunal has awarded excess compensation under various heads. This apart, as far as the negligence aspect is concerned, the Tribunal having held that the rider of the two wheeler along with two pillion riders also negligent, ought to have fixed atleast 50% contributory negligence on the rider of the two wheeler instead of 10%. The Tribunal erred in fixing the income of the deceased as Rs.10,538/- per month when the claimants themselves claimed Rs.9,000/- per month. The Tribunal failed to make deduction towards income tax as per the decisions of the Apex Court. The Tribunal has wrongly awarded 50% future prospects without following the judgment of the Hon'ble Supreme Court. The compensation awarded by the Tribunal under the heads of love and affection and loss of consortium are on the higher side, hence, he prays to reduce the award amount.



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6. On the other hand, the learned counsel appearing for the appellants/claimants submitted that the Tribunal has erred in fixing 10% negligence on the part of the deceased. Though the deceased was travelling with two other persons as triples in a motor cycle, the negligence is not on his side and the driver of the bus was not examined and he is only the witness to speak about the evidence regarding negligence. Hence the Tribunal ought to have fixed entire negligence on the side of the driver of the Transport Corporation bus when there is no contra evidence by the respondent. The compensation awarded under the heads viz., funeral expenses and consortium is not adequate. Hence, he sought enhancement of compensation.

7. Heard Mr.S.S.Swaminathan, the learned counsel appearing for the appellant/Transport Corporation and Mr. K.Varadhakamaraj, the learned counsel appearing for the respondents/claimants.

8. As far as the negligence is concerned, eventhough the learned counsel for the Transport Corporation contended that the deceased alone turned in the wrong side and invited the accident, no oral



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and documentary evidence was adduced on their side. However, as seen from the records, at the time of accident, the deceased travelled in the motor cycle in “Triples”. Therefore, this Court is of the considered opinion on that the Tribunal has rightly fixed the contributory negligence on the part of the insurance company at 90% and 10% negligence on the part of the deceased.

9.As far as the future prospects is concerned, considering the age of the deceased as 31 years at the time of accident, the Tribunal has rightly granted 50% future prospects following the decision of Hon'ble Supreme Court in *Pranay Sethi* case.

10. Insofar as the quantum of compensation awarded by the Tribunal is concerned, this Court has perused the pleadings and evidence adduced by the respective parties. In the claim petition as well as in the evidence of PW1, it is stated that the deceased was working as office assistant in Corporation, Chennai and was earning Rs.9,000/- per month. To prove the same, Ex.P6. Ex.X3 and Ex.X4 ID card, service, register and pay slip respectively have been marked on the side of the claimants.



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The deceased was 31 years at the time of accident. Hence, considering the age and avocation of the deceased, the Tribunal has rightly fixed a sum of Rs.10,538/- (Basic pay Rs.8,080/- DA Rs.1778/- HRA Rs.680/-) as monthly income and it does not call for any interference by this Court. Taking an overall view, this Court is of the considered view that the compensation awarded by the Tribunal is a just compensation and there is no scope for interference by this Court.

11. In the result,

(i) The Appellant/Transport Corporation is directed to deposit the award amount along with interest at the rate of 7.5% per annum and costs, after deducting the amount already deposited, if any, to the credit of MCOP No.1519 of 2009 within a period of six weeks from the date of receipt of a copy of this Judgment.

(ii) On such deposit being made, the Tribunal is directed to transfer the respective shares of the award amount as per the ratio apportioned by it to the bank account of the claimants 1 and 4 along with accrued interest through RTGS within a period of two weeks thereafter.



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(iii) Insofar as the minor claimants 2 and 3 are concerned, their share of award amount shall be deposited in any one of the Nationalised Banks till they attains majority and the first petitioner/mother of the minors is permitted to withdraw the interest accrued once in six months.

12. Accordingly, the Award and decree dated 27.06.2014 made in MCOP No.1519 of 2009 on the file of the Motor Accident Claims Tribunal / Special Sub Judge, Court of Small Causes, Chennai is confirmed and this Civil Miscellaneous Appeals is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

27.04.2023

Index : Yes/No
Speaking order/Non-Speaking order
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(2/2)

To

1. The Motor Accident Claims Tribunal
Special Subordinate Judge,
Court of Small Causes,
Chennai.

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



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A.A.NAKKIRAN J.

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