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C.M.A(MD)No.713 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 13.12.2022

Pronounced on : 31.01.2023

CORAM

THE HONOURABLE MRS.JUSTICE **R.THARANI**

C.M.A(MD)No.713 of 2020

and

C.M.P(MD)No.10021 of 2022

The Managing Director,
Tamil Nadu State Transport Corporation,
Periyamilaguparai,
Collector Office Road,
Trichy – 620 001.

... Appellant/Respondent

Vs.

1.Vasavi @ Vasuki

2.Sevanthan

... Respondents/Claimants

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicle Act, 1988, to set aside the impugned award passed in M.C.O.P.No.364 of 2014, dated 10.01.2020 on the file of the Motor Accidents Claims Tribunal, (Sub Court), Kuzhithalai.

For Appellant : Mr.P.M.Vishnuvarthanan

For Respondents : Mr.N.Sudhagar Nagaraj



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JUDGMENT

This appeal is filed against the judgment and award made in M.C.O.P.No.364 of 2014, dated 10.01.2020 on the file of the Motor Accidents Claims Tribunal, (Sub Court), Kuzhithalai. The appellant is the respondent. Respondents are the claimants in the claim petition.

2.Brief substance of the claim petition is as follows:

On 03.10.2011 at about 8.10 a.m., when the deceased Selvam was boarding a bus bearing registration number TN 45 N 3179, the driver of the bus who is having some competition with another bus bearing registration number TN 45 N 1795, moved the bus in a rash and negligent manner, thereby the deceased met with an accident and he died on his way to the hospital. The deceased was aged about 33 years and he was working as a mason under a civil engineer by name Gurusamy. He was earning Rs. 20,000/- per month. The petitioners were his dependants and they claim a sum of Rs.20,00,000/- as compensation.



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3. Brief substance of the counter filed by the respondent is as follows:

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The bus was driven by its driver in a careful and cautious manner. After the passengers boarding into the bus, the driver, after blowing the horn, moved the bus in a slow manner, the deceased came running to catch the bus. He failed to note the upcoming bus, dashed against the bus bearing registration number TN 45 N 1795 and met with an accident. The accident has happened only due to the negligence of the deceased himself. The age, income and profession are all denied. The claim is excessive.

4. Two witnesses were examined and three documents were marked on the side of the petitioner. One witness was examined and no document was marked on the side of the respondent. The Tribunal awarded a sum of Rs.17,77,800/- as compensation.

5. Against the award, the appellant filed this appeal on the following grounds:

The Tribunal is wrong in fixing the monthly income as Rs.9,000/- per month. The Tribunal is wrong in fixing the entire negligence on the appellant. It was the deceased who tried to board the bus without watching



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out the approaching vehicle and he invited the accident. The age, income, fixed by the Tribunal is wrong. The award is excessive.

6.On the side of the appellant, it is stated that the income fixed by the Tribunal is excessive and the same has to be reduced to Rs.6000/- per month. Without any proving of income, the Tribunal fixed the income at Rs.9000/- per month which is excessive.

7.In the grounds of appeal, the appellant has questioned the liability. P.W.2 was examined as an eye witness. He has stated that both the bus drivers who compete with each other and in their competition they dashed against the deceased. R.W.1 was examined on the side of the appellant. R.W.1 was the driver of the vehicle. The FIR is against R.W.1. No independent witness was examined on the side of the respondent. R.W.1 has deposed that when he moved the bus in a slow manner, the deceased tried to board the bus.

8.If the driver of the vehicle noted the passenger trying to get into the moving bus, it is duty of the driver to stop the bus. Though R.W.1 has



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deposed that the deceased tried to board the bus, why he has not stopped the vehicle, was not stated in his evidence. Ex.P1 - FIR was registered against the driver of the bus. The evidence of R.W.1 cannot be given much weightage. From the evidence of P.W.2 and from Ex.P1, the Tribunal fixed the liability on the appellant, which is reasonable.

9.On the side of the claimants it is stated that the deceased was earning Rs.20,000/- p.m., as a mason. There is no evidence to prove the income of the deceased. The Tribunal fixed notional monthly income as Rs.9,000/-. Considering the date of accident, the income fixed by the Tribunal is reasonable.

10.The Tribunal has deducted 1/3 of the income towards the own expenses of the deceased and added 40% towards future prospects. The Tribunal fixed the age of the deceased as 35 years and applied multiplier 16 and calculated, the loss of income as Rs.16,12,800/-, which is reasonable.

11.On the side of the appellant it is stated that the Tribunal awarded Rs.1,00,000/- towards loss of consortium, Rs.50,000/- towards loss of love



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and affection, Rs.10,000/- towards funeral expenses, Rs.5,000/- towards transport expenses.

12.Considering the dictum of the Hon'ble Supreme Court in in **National Insurance Co. vs Pranay sethi and others** reported in **2017 (2) TNMAC 601 (SC)**, it is decided that the claimants are entitled to Rs.70,000/- towards conventional charges. The calculation is as under:

Loss of Income	-	Rs.16,12,800/-
Conventional charges	-	Rs. 70,000/-

Total	-	Rs. 16,82,800/-

13. The Civil Miscellaneous Appeal is partly allowed. No costs.

(i) The quantum of compensation awarded by the Tribunal is reduced from Rs.17,77,800/- to Rs.16,82,800/- (Rupees Sixteen Lakhs Eighty Two Thousand and Eight Hundred only), which shall carry an interest of 7.5% p.a. from the date of claim petition till the date of deposit and with cost.

(ii) The appellant / Transport Corporation is directed to deposit the entire compensation amount i.e., Rs.16,82,800/- (less the amount already deposited) together with interest and with costs to the credit of M.C.O.P.No.



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364 of 2014, dated 10.01.2020 on the file of the Motor Accidents Claims Tribunal, (Sub Court), Kuzhithalai, within a period of eight weeks from the date of receipt of a copy of this order.

(iii) On such deposit being made by the appellant / Transport Corporation, the first respondent / first claimant is at liberty to withdraw her share Rs.12,82,800/-(Rupees Twelve Lakhs Eighty Two Thousand and Eight Hundred only) with an interest of 7.5% p.a., and costs and the second respondent / second claimant is at liberty to withdraw his share of Rs. 4,00,000/- (Rupees Four Lakhs only) with an interest of 7.5% p.a., after following the due process of law, less any amount already received by them.

(iv) Consequently, connected miscellaneous petition is also closed.

31.01.2023

Index: Yes / No

Internet : Yes / No

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To

- 1.The Motor Accidents Claims Tribunal, (Sub Court), Kuzhithalai.
- 2.The Record Keeper, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.

Pre - Delivery Judgment made in
C.M.A(MD)No.713 of 2020

31.01.2023