



C.M.A(MD)No.229 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on :25.11.2022

Pronounced on :17.04.2023

CORAM

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

C.M.A(MD)No.229 of 2017

The Divisional Manager,
Tamil Nadu State Transport Corporation Limited,
Vannarapettai,
Tirunelveli.

... Appellant /Respondent

Vs.

1.S.Subbaiah

2.Esakkiammal

... Respondents/Petitioners

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicle Act, 1988, to allow this appeal, set-aside the award and decree made in M.C.O.P.No.118 of 2014, dated 27.10.2014 on the file of the Motor Accident Claims Tribunal/ II Additional District and Sessions Court, Tirunelveli.

For Appellant : Mr.P.Prabhakaran

For Respondents : No appearance



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JUDGMENT

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This appeal is filed against the order made in M.C.O.P.No.118 of 2014, dated 27.10.2014, on the file of the Motor Accident Claims Tribunal/II Additional District and Sessions Court, Tirunelveli. The Transport Corporation/appellant herein is the respondent and the respondents herein are the claimants in the claim petition.

2.A brief substance of the claim petition is as follows:

On 23.09.2013, when the deceased and the others were travelling in a bus bearing Registration No.TN-72-N-1380, the driver of the bus drove the vehicle in a rash and negligent manner and he dashed against an electric pole. As a result, the electric pole bent down and it hit the deceased, who travelled in the bus. Out of which, the deceased sustained fatal injuries on his head and succumbed due to the injuries. The deceased was aged about 25 years; he was working as Music Instrument/Player and he was earning a sum of Rs.9,000/- per month. The petitioners are his dependants and they claim a sum of Rs. 15,00,000/- as compensation.



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3. A brief substance of the counter filed by the respondents are as follows:

The claim petition is not maintainable either in law or on facts. The claimants are put to strict proof of the age, occupation, monthly income legal heirship and the dependency and the manner of accident are to be proved. The driver of the bus had driven the bus slowly and cautiously by observing all the traffic rules and regulations of the road and when the bus reached near Puliurkurichi, the deceased suddenly peeped outside the bus and he dashed against an electric pole. The entire negligence was on the part of the deceased. The driver of the bus was no way responsible for the accident. The claim is excessive.

4.Two (2) witnesses were examined and two (2) documents were marked on the side of the petitioners. One (1) witness was examined and no document was marked on the side of the respondent. On considering the oral and documentary evidence, the Tribunal has awarded a sum of Rs.6,28,000/- as compensation.



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5. Aggrieved by the award, the appellant has preferred this appeal on the following grounds:

Without any proof of income, the tribunal has fixed the monthly income as Rs.6,000/- per month, which is on the higher side. The tribunal is wrong in adopting multiplier 18. The age of the mother of the deceased ought to have been taken and multiplier 14 ought to have been adopted. The tribunal awarded a sum of Rs.25,000/- towards the funereal expenses, which is high. The tribunal has fixed the interest at 8%, which is excessive and the total award is excessive. The tribunal failed to note that the entire negligence was on the part of the deceased, who put his head outside the bus, which was the cause for hitting against the electric pole. The tribunal ought to have fixed at least 50% of contributory negligence on the part of the deceased.

6. On the side of the appellant, it is stated that the deceased placed his head outside the window and the accident had happened due to his negligence.

7. On the side of the respondents/claimants, P.W.2, was examined as an eye witness, who has deposed that the driver of the bus drove it in a rash and



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negligent manner with terrific speed and the bus dashed against the electric pole on the left side of the road and that as a result of the accident, the electric pole bent and hit the deceased, who travelled in the bus.

8. Copy of the FIR was marked as Ex.P1, which discloses that the deceased placed his head outside the bus and dashed on the electric pole. The tribunal came to the conclusion that the driver of the bus had driven the bus in a rash and negligent manner and dashed against the electric pole and after hearing the noise, the deceased peeping out from the bus and electric pole hit on his head. The tribunal fixed 10% contributory negligence on the part of the deceased. The decision of the tribunal is reasonable. Hence, 10% negligence is fixed on the deceased. As per the Postmortem certificate Ex.P.2, the tribunal fixed the age of the deceased as 23 years.

9. The tribunal has fixed the monthly income as Rs.6,000/-, the accident has happened in the year 2013 and hence the notional monthly income fixed by the tribunal is reasonable.



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10. On the side of the appellant, it is stated that since the deceased died as a bachelor, the age of the mother is to be taken into consideration. In a catena of decisions, the Supreme Court has held that the age of the deceased is to be taken into consideration for fixing the multiplier. Accordingly, Multiplier 18 is to be adopted. After deducting 50% towards his own expenses, the deceased might have contributed Rs.3,000/- for his family members, fixing Rs.3,000/- as the monthly income, the loss of income is calculated at Rs.6,48,000/- (3000 x 12 x 18). After deducting 10% (Rs. 64,800/-) towards the own negligence of he deceased, the claimants are entitled to a sum of Rs.5,83,200/- towards loss of income.

11. The tribunal has awarded a sum of Rs.10,000/- for each of the respondents towards loss of love and affection and Rs.25,000/- towards funeral expenses, which are all high.

12. The respondents/claimants, have not filed any appeal/cross objection. Hence, the total compensation awarded by the tribunal is just and reasonable and the total amount of Rs.6,28,200/- as compensation awarded by the Tribunal is reasonable.



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13. On the side of the appellant, it is stated that the Tribunal has awarded compensation with 8% interest, which is on the higher side. **Hence, the rate of interest is reduced to 7.5%.**

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

(i) The quantum of compensation, Rs.6,28,200/- (Rupees Six Lakhs Twenty Eight Thousand Tow Hundred only) awarded by the Tribunal is hereby confirmed. The award amount shall carry interest at the rate of 7.5% peer annum.

(ii) The appellant is directed to deposit the entire compensation of Rs. 6,28,200/- (Rupees Six Lakhs Twenty Eight Thousand Two Hundred Only) (if not already deposited) together with interest at the rate of 7.5% per annum from the date of filing of the claim petition till the date of deposit and with proportionate costs, within a period of eight weeks from the date of receipt of a copy of this order.



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(iii) On such deposit being made by the appellant, the claimants are permitted to withdraw their shares as apportioned by the Tribunal, with accrued interest and costs, less any amount already withdrawn by them. The claimant is not entitled to interest fro the default period, if there is any.

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NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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R.THARANI, J.

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Pre - Delivery Judgment made in
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