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Civil Miscellaneous Appeal No.1402 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.06.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Civil Miscellaneous Appeal No.1402 of 2024
and CMP No.12335 of 2024

The Managing Director,
State Express Transport Corporation Ltd.,
Pallavan Salai,
Chennai 600 002

... Appellant

Vs.

1. S.Dhanabakkiam

2. S.Viji

3. Minor S.Santhiya

4. Govindammal

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set-aside the fair and decretal order dated 28.07.2022 passed in M.C.O.P. No.106 of 2019 by the learned Subordinate Judge, Motor Accident Claims Tribunal, Omalur.

For Appellant : Mr.P.M.Vijayakumar



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JUDGMENT

The appellant Transport Corporation, aggrieved by the award passed by the learned Subordinate Judge, Motor Accident Claims Tribunal, Omalur in M.C.O.P.No.106 of 2019, dated 28.07.2022, has filed this appeal.

2. The claimants, who are the wife, children and mother of the deceased Sekar filed the claim petition before the Tribunal on the ground that the deceased Sekar was walking along Dharmapuri to Salem NH 47 Road on 01.12.2018 and at about 7.00 p.m, when he was nearing ThalavayEEPatty bus stop, the bus belonging to the Transport Corporation was driven in a rash and negligent manner and it dashed on the deceased and as a result, the deceased died on the spot and an FIR was registered in Crime No.713 of 2018 against the driver of the bus. It is under these circumstances, the claim petition came to be filed before the Tribunal seeking for compensation.



3. The Tribunal, on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, came to a conclusion that the accident had taken place only due to the rash and negligent driving on the part of the driver of the bus belonging to the transport Corporation. Having rendered such a finding, the Tribunal proceeded to determine the total compensation payable at Rs.19,01,000/- in the following manner:

<i>Sl. No.</i>	<i>Compensation awarded under the head</i>	<i>Amount (in Rs.)</i>
1.	Loss of future income	Rs.17,01,000/-
2.	Loss of Estate	Rs. 15,000/-
3.	Funeral Expenses	Rs. 15,000/-
4.	Loss of Consortium	Rs. 40,000/-
5.	Love and affection (2 to 4 petitioners Rs.40,000/- each)	Rs. 1,20,000/-
6.	Transportation expenses	Rs. 10,000/-
	Total	Rs.19,01,000/-

The Tribunal directed the above compensation to be paid with interest at the rate of 7.5% p.a.

4. The appellant transport Corporation aggrieved by the



Liability as well as the quantum of compensation awarded by the Tribunal, has filed the present appeal.

5. Heard Mr.P.M.Vijayakumar, learned counsel for appellant Transport Corporation.

6. This Court carefully considered the submissions made on either side and the materials available on record.

7. This Court also carefully went through the award passed by the Tribunal.

8. The learned counsel for the appellant submitted that the deceased had also contributed towards the accident since he was not using the pedestrian of foot path while walking in the road. The appellant has not let in any evidence in this regard and the Tribunal has considered the eye witness account of PW2 to come to a conclusion that the accident had taken place due to the rash and negligence driving on the part of the driver of the bus belonging to the Transport Corporation. In the absence



of any contra evidence, there cannot be any assumption that the deceased had also contributed to the accident.

9. Insofar as the quantum of compensation is concerned, it was contended that the Tribunal had fixed the age of the deceased as 36 years and the same cannot be right since the wife of the deceased was shown as 32 years and the age of the major son was shown as 18 years and if that is so, the deceased must have been hardly 18 years and the wife must have been 14 years.

10. Insofar as the age of the deceased is concerned, the Tribunal has taken into consideration the age that was mentioned in the postmortem certificate, in the death certificate and also in the legal heirship certificate. The dispute with regard to age was not even raised before the Tribunal. That apart, the appellant Corporation also did not let in any contra evidence with respect to the age of the deceased. Therefore, at the stage of appeal, this Court cannot go into the issue of age. The Tribunal has fixed the age of the deceased based on Ex.P2 to P4 and the Tribunal has also considered the age of the claimants based on Ex.P5 to P8.



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Therefore, this Court does not find any ground to interfere with the compensation amount awarded by the Tribunal.

11. The learned counsel for appellant further contended that the Tribunal ought not to have added 40% towards future prospects. In the considered view of this Court the age of the deceased was 36 years and the Tribunal has rightly taken note of the judgment of the Apex Court and has added 40% towards future prospects since the deceased was doing Sengal Soolai work.

12. The compensation that has been granted by the Tribunal under various heads are reasonable and it does not require the interference of this Court.

13. This Court does not find any ground to interfere with the compensation awarded by the Tribunal and hence, this Civil Miscellaneous appeal stands dismissed.

14. The appellant Transport Corporation is directed to deposit the



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compensation, less the amount already deposited, together with interest at 7.5% p.a. from the date of claim petition till the date of deposit within a period of six weeks from the date of receipt of this judgment. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered. No costs. Consequently, connected miscellaneous petition is closed.

24.06.2024

Speaking Judgment/Non-speaking Judgment

Index :Yes/No

Neutral citation: Yes/No

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To

Subordinate Judge, Motor Accident Claims Tribunal, Omalur.



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N.ANAND VENKATESH, J.

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