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C.M.A.No.3206 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.11.2024

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THE HONOURABLE MRS. JUSTICE J.NISHA BANU
and
THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

C.M.A.No.3206 of 2024

and

C.M.P.No.26758 of 2024

The Managing Director,
The Tamil Nadu State Transport Corporation Ltd.,
(Salem Division), Salem Main Road,
Bharathipuram Post,
Dharmpauri Taluk & District.

... Appellant

Vs.

1. Sandhiya
W/o Gokulraj
2. Dhanalakshmi,
W/o Panneer
3. Panneer,
S/o Dharuman
4. Kunthiyammal,
D/o Panneer
(Blind 4th respondent rep. by
their next friend/mother/2nd respondent)

... Respondents



C.M.A.No.3206 of 2024

Prayer: The Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 03.10.2023 in MCOP.No.587/2022 on the file of Exclusive Motor Accidents Claims Tribunal, Dharmapuri.

For Appellant : Mr.D.Nitin

For Respondents : Mr.M.Selvam

JUDGMENT

(Judgment of the Court was delivered by J. Nisha Banu, J)

This Civil Miscellaneous Appeal has been filed by the Insurance Company challenging the judgment and decree dated 03.10.2023 passed in MCOP.No.587 of 2022 by the Exclusive Motor Accidents Claims Tribunal, Dharmapuri, by which, a sum of Rs.44,74,200/- was awarded as compensation to the respondents/claimants herein.

2. The case of the claimants in the claim petition is that on 08.06.2022, the deceased Gokularaj was proceeding to Pulikarai in his two wheeler bearing registration No.TN-29-BH-8460 towards Thippampatti, on Kambaiyanallur-Thippampatti Road, near Pattagapatti Government Milk Society at about 11.00 p.m., the driver of the bus bearing registration No.TN-29-N 2644, owned by the respondent, which came from opposite direction, was driven in a rash



C.M.A.No.3206 of 2024

and negligent manner, hit the two wheeler, due to which, Gokulraj sustained injuries and died on the spot. The deceased was aged 24 years at the time of accident and was working as a Eicher Van driver in Perumalappan Transport and earned Rs.30,000/- per month. The claimants are wife, parents and sister of the deceased. They claimed Rs.50,00,000/- as compensation from the State Transport Corporation.

3. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the Transport Corporation and awarded a sum of Rs.44,74,200/- as compensation to the claimants and the Transport Corporation was directed to pay the award amount to the claimants/respondents.

4. Challenging the said award dated 03.10.2023 made in M.C.O.P.No.587 of 2022, the appellant/Transport Corporation has come out with the present appeal.

5. The learned counsel for the appellant submitted that the manner of the accident has not been considered by the Tribunal and fastened the negligence on the Corporation blindly. The brother of the deceased who was not present at



C.M.A.No.3206 of 2024

the time of accident has given the complaint, based on which the FIR was lodged against the driver of the bus. P.W.1/wife of the deceased was not an eye witness to the accident. P.W.2 one Subramani who is the so called eye witness, narrated the manner of accident. Holding the appellant as tort feaser, based on FIR is not justifiable.

6. Learned counsel would further state that there is no proof that the deceased was working as Eicher van driver and was earning Rs.30,000/- per month. However, the Tribunal had fixed the notional income as Rs.19,000/-. Learned counsel would further state that 1/4th was deducted for personal expenses whereas the deceased was a married man and living separately but the parents and sister were added as the dependants of the deceased. The Tribunal ought to have deducted only 1/2 instead of 1/4 for personal expenses of the deceased. Further, the award of Rs.44,000/- and Rs.88,000/- towards loss of consortium and filial consortium are excessive.

7. (i) Per contra, the learned counsel for the claimants would state that the rash and negligent act of the bus driver is proved through P.W.2. P.W.2, one Subramani was examined as eye witness. He had clearly stated that the accident occurred on 08.06.2022 at 11.00 p.m. when the deceased Gokulraj



C.M.A.No.3206 of 2024

was proceeding to Kambaiyanallur-Thippampatti Road near Pattagapatti

Government Milk Society, the driver of the bus owned by the respondent was driven in a rash and negligent manner, came from opposite direction and dashed against the two wheeler of the deceased, due to which, the deceased sustained injuries and died on the spot. P.W.2 had stated that he was in the place of occurrence and saw the entire occurrence and informed the deceased brother Kabilian, who gave the complaint to police, based on which, FIR was registered. P.W.2, in his deposition, had also denied that the accident occurred due to negligence and careless driving of the deceased. In the absence of any rebuttal evidence, the Tribunal had come to the conclusion that the accident occurred only due to the negligence of the driver of the Transport Corporation bus.

(ii). Learned counsel for the claimants would further state that though they have claimed that the deceased was earning Rs.30,000/- per month, the Tribunal, considering the age of the deceased as 24 years had only fixed the notional monthly income of the deceased as 19,000/-. Therefore, the learned counsel would pray to dismiss the appeal.

8. Heard the learned counsel for the appellant/State Transport



C.M.A.No.3206 of 2024

Corporation as well as the learned counsel for the 1st to 4th respondents/claimants and perused the materials available on record.

9. The appellant Transport Corporation has filed this appeal questioning the negligence and the quantum of the award passed by the Tribunal. The Tribunal had come to the conclusion that the accident occurred only due to the negligence of the driver of the bus, based on P.W.2 eye witness. P.W.2, one Subramani was examined as eye-witness. He had clearly stated that the accident occurred on 08.06.2022 at 11.00 p.m. when the deceased Gokulraj was proceeding to Kambaiyanallur-Thippampatti Road near Pattagapatti Government Milk Society, the driver of the bus, owned by the Transport Corporation which came from opposite direction was driven in a rash and negligent manner and dashed against the two wheeler of the deceased, due to which, the deceased sustained injuries and died. He had further stated that he was in the place of occurrence and saw the entire occurrence and informed the deceased brother Kabilan, who gave a complaint to police, based on which, FIR was registered. P.W.2, in his deposition, had also denied that the accident occurred due to negligence and careless driving of the deceased. In the absence of any rebuttal evidence, the Tribunal had come to the conclusion that the accident occurred only due to the negligence of the driver of the bus. We are of



C.M.A.No.3206 of 2024

the opinion that the said findings of the Tribunal does not warrant any interference by this Court.

10. Insofar as the income and dependency of the deceased disputed by the Transport Corporation is concerned, it is evident from Exs.P2 to P4, post-mortem certificate, death certificate and driving licence of the deceased respectively, that the age of the deceased is 24 years on the date of accident. It is also seen from Ex.P11, legal heir certificate that the deceased is the only son. The wife, father, mother and blind sister are the dependants of the deceased. The contention of the learned counsel for the appellant that as the deceased was married, the father, mother and sister of the deceased are living separately and they are not the dependants of the deceased and that deducting 1/4 for personal expenses is not proper, cannot be countenanced. Though the claimants have claimed that the deceased was earning Rs.30,000/- per month, the Tribunal had fixed the notional monthly income of the deceased as Rs.19,000/- only. Further, as the deceased is the only son and the wife had also lost her husband at the early age, we are of the opinion that the amount of Rs.44,000/- and Rs.88,000/- for loss of consortium and filial consortium respectively need not be interfered with. Therefore, the award passed by the Tribunal is not excessive and the same does not warrant any interference by this Court.



C.M.A.No.3206 of 2024

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11. In the result, the Civil Miscellaneous Appeal is dismissed. The appellant/Transport Corporation is directed to deposit the entire amount awarded by the Tribunal along with interest and cost, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the respondents 1 and 4/claimants are permitted to withdraw their respective share of the award amount as per the apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn. No costs. Consequently, connected Miscellaneous Petition is closed.

(J.N.B., J.) (R.S.V., J.)
25.11.2024

Index:Yes/No
vsi

To

The Exclusive Motor Accidents Claims Tribunal,
Dharmapuri.



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C.M.A.No.3206 of 2024

J. NISHA BANU, J.
and
R.SAKTHIVEL, J.

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C.M.A.No.3206 of 2024

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