IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On :18.09.2024

Pronounced On : 25.10.2024

CORAM

THE HONOURABLE MRS. JUSTICE J.NISHA BANU

AND

THE HONOURABLE MRS. JUSTICE R. KALAIMATHI

C.M.A.No.2545 of 2023

1.Rekha

2.Minor Tejeshkumar

3.Minor Nithesh ...Petitioners/Appellants

vs.

The Managing Director,
Tamil Nadu Government Transport Corporation,
Salem Branch, Ramakrishna Salai,
Salem – 636 007 ...Respondent/Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 21.06.2023 made in M.A.C.T.O.P.No.42 of 2019 on the file of the Motor Accident Claims Tribunal / Sub Court, Vaniyambadi, Tirupattur District.

For Appellants : Ms.M.Malar

For Respondent : Mr.D.Nitin

JUDGMENT

(Judgment of the Court was made by Mrs.R.Kalaimathi, J.)

Not being satisfied by the award dated 21.06.2023 made in M.C.O.P.No.42 of 2019 on the file of Motor Accident Claims Tribunal / Sub Court, Vaniyambadi, the legal heirs of the deceased Madesh have preferred this appeal.

2. Claim petition was filed under Section 166 of Motor Vehicles Act, 1988, claiming compensation of Rs.60,00,000/- for the death of Madesh on account of injuries suffered in a road traffic accident that occurred on 01.03.2019.

3. Facts led to the filing of claim petition is set out hereunder:

On 01.03.2019 at about 2.00 p.m., near Sanasanthiram junction road along the Hosur-Royakottai main road, driver of the TNSTC bus bearing Registration No.TN-29-N-2235 drove the bus in a rash and negligent manner proceeding from Hosur to Royakottai, at a point of junction, hit on the two wheeler (Registration No.KA 04 EJ 7700) in which the said Madesh proceeding in the opposite direction on the left side of the road slowly. Due to the said impact, the deceased sustained fatal injuries and succumbed to the same on the spot itself. The accident occurred due to the rash and negligent driving of the bus by its driver. Hence, the respondent Transport Corporation is liable to pay compensation to the claimants for the death of Madesh.

4. Details of the counter is given in brief:

It is not correct to state that due to the rash and negligent driving of the driver of the respondent bus the accident occurred. The deceased entered the main road from the left side of the cross road suddenly.

5. At trial, on the petitioners side, two witnesses have been examined and 15 documents were marked. On the respondent side, driver of the above said bus is examined as R.W.1.

6. Heard Ms.M.Malar, learned counsel appearing for the appellants/claimants and Mr.D.Nitin, learned Standing Counsel for the respondent / Transport Corporation.

7. Ms.M.Malar, the learned counsel appearing for the appellants would strenuously argue that the trial court has deducted 20% of the compensation for non-production of driving licence and not wearing the helmet by the deceased, which is on the higher side. She would further contend that the deceased was running a business in the name and style of M/s MM Engineering Works and earning a sum of Rs.30,000/- per month. In order to prove the same, his Income Tax Assessment for the year 2010-2011, Income Tax Assessment for the year 2011-2012 and a copy of the accounts pertaining to the M/s.MM Engineering Works for the period from the year 2010 to 2012 were marked and the Tribunal without taking into consideration of these documents has fixed the income at Rs.12,000/- per month, which is not correct.

8. Per contra, Mr.D.Nitin, learned Standing Counsel for the respondent Transport Corporation would strenuously contend that the accident occurred in the year 2019, as no document to substantiate the avocation and income of the deceased is filed and marked, the Tribunal has fixed the income of the deceased at Rs.12,000/- per month, cannot be found fault with. It is his further argument that, for contributory negligence under two heads, deduction of 20% made in the compensation as it was

not proved by the claimants. The compensation granted under various heads are reasonable and sought for dismissal of the appeal.

9. Apart from the other discussions, it has been contended by the respondent side that the deceased drove the vehicle without driving licence at the relevant point of time and he was not wearing helmet at the time of accident. For that, the claimants have to suffer for the contributory negligence. In order to substantiate the same, the driving licence of the deceased was not produced and marked by the claimants. Even in Ex.P3-Inspection Report of motor vehicle pertaining the deceased vehicle, it has been mentioned that driving licence of the deceased was not produced. More so, the ocular witness (P.W.2) has nowhere stated in his evidence that the deceased was wearing helmet at the time of accident. Whereas, the driver of the bus R.W.1-Munivel has stated that, at the time of accident, the deceased Madesh was not wearing helmet. Therefore, it is made clear that at the time of accident, the deceased was not in possession of driving licence to ride the two wheeler and not wearing helmet at the relevant point of time. For the same, we are of the considered view that the contributory negligence on the part of the deceased is fixed at Rs.15% to meet the ends of justice.

10. The second limb of the argument is that, income of the deceased fixed by the Tribunal is not sufficient. It has come on record through the evidence of P.W.1-Smt.Rekha who is the wife of the deceased that the deceased was running a business in the name and style of MM Engineering Works besides doing other business, and he was earning about Rs.30,000/- per month. In order to substantiate the same, the following documents were marked.

1. Ex.P.10 - Acknowledgment issued by Income Tax Department in the name of Madesh for the Assessment Year 2010 – 2011
2. Ex.P.11 - Acknowledgment issued by Income Tax Department in the name of Madesh for the Assessment Year 2010 – 2012
3. Ex.P.12 - Balance sheet as on 31.03.2010 pertaining M/s.MM Engineering Works (Copy)
4. Ex.P.13 - Balance sheet as on 31.03.2011 pertaining M/s.MM Engineering Works (Copy)
5. Ex.P.14 - Balance sheet as on 31.03.2012 pertaining M/s.MM Engineering Works (Copy)

11. Date of accident is 01.03.2019. Considering the year of

accident, as the above said documents pertains to the year 2010 to 2012, the said documents were not taken into consideration by the Tribunal which cannot be found fault with. Upon consideration of the evidence of P.W.1, the income of the deceased is fixed at Rs.15,000/- per month. As per the post-mortem certificate of the deceased Madesh (Ex.P2), age of the deceased is fixed at 32 years. As per the law laid down by the Hon'ble Supreme Court as regards the future prospects in case of self-employed persons in *National Insurance Co. Ltd., v. Pranay Sethi and others,* reported in *2017 (2) TN MAC 609(SC),* persons age below 40 years, 40% has to be added while computing the income of the deceased.

12. As regards the multiplier to be applied, the Apex Court has given the multiplier details for the various age group of people in *Sarala Varma vs Delhi Transport Corporation and another,* reported in *2009(2) TNMAC 1 (SC).* For the age group of persons between 31 to 35 years, multiplier to be adopted is 16m. As regards the deduction for personal and living expenses, as the deceased has left behind three persons, 1/3rd has to be deducted. Based on the aforestated details, the loss of income is computed as mentioned below:

A	Monthly Income fixed	Rs.15,000/-
B	Future Prospects (40% of monthly income)	Rs.6,000/-
C	1/3rd Deduction towards Personal Expenses [(A+B) x 1/3]	Rs.7,000/-
D	Total Dependency (A + B - C)	Rs.14,000/-
E	Annual Income (D x 12)	Rs.1,68,000/-
F	Age Multiplier	16
	Loss of Income (E x F)	Rs.26,88,000/-

13. The Tribunal has granted an amount of Rs.40,000/- for each claimant for loss of consortium, an amount of Rs.15,000/- was granted for loss of funeral expenses and for loss of estate Rs.15,000/- was granted. Therefore, the compensation awarded by the Tribunal is reworked and tabulated below:

Sl. No.	***Description***	***Amount awarded by Tribunal***	***Amount awarded by this Court***	***Award confirmed or enhanced or granted or reduced***
1	For Loss of Income	Rs.15,36,000/-	Rs.26,88,000/-	**Enhanced**
2	For loss of consortium	Rs.1,20,000/-	Rs.1,20,000/-	**confirmed**
3	For Loss of Funeral Expenses	Rs.15,000/-	Rs.15,000/-	**confirmed**
4	For loss of filial consortium to the children	Rs.15,000/-	Rs.15,000/-	**confirmed**

Sl. No.	Description	Amount awarded by Tribunal	Amount awarded by this Court	Award confirmed or enhanced or granted or reduced
	Total	**Rs.16,86,000/-**	**Rs.28,38,000/-**	**Enhanced**
Contributory Negligence		(Less 20%) Rs.16,86,000/- - Rs.3,37,000/- = **Rs.13,48,800/-**	(Less 15%) Rs.28,38,000/- - Rs.4,25,700/- = **Rs.24,12,300/-**	

` 14. Thus, the compensation awarded by the Tribunal is enhanced from Rs.13,48,800/- to Rs.24,12,300/- which would carry interest at the rate of 7.5% per annum from the date of petition till the date of realisation.

15. In the result,

(i) The Civil Miscellaneous Appeal stands Partly Allowed. No costs.

(ii) The compensation awarded by the Tribunal is enhanced from 13,48,800/- to Rs.24,12,300/-

(iii) The Transport Corporation is directed to deposit the enhanced compensation amount now determined by this Court i.e., Rs.24,12,300/- (less the amount already deposited if any) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No.42 of 2019 on the file of Motor Accidents Claims Tribunal, Vaniyambadi within a period of six weeks from the date of receipt of a copy of this Judgment.

(iv) On such deposit being made, the claimants are permitted to withdraw the amount now determined by this Court, as apportioned by the Tribunal, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary application before the Tribunal.

(v) The share of the minors shall be deposited in any one of the nationalized bank till the minors attains majority and the 1st appellant, mother of the minors Ms.Rekha is permitted to withdraw quarterly interest from the said amount.

(vi) The claimants are directed to pay the Court fee for the enhanced compensation amount, if required.

(vii) The Tribunal below shall disburse the amount upon production of the certified copy showing proof of payment of Court fee by the claimants. Consequently, connected Civil Miscellaneous Petition stands closed.

(J.N.B.,J.) (R.K.M.,J.)

25. 10.2024

Index : Yes/No
Internet : Yes/No

Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
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J.NISHA BANU, J.
and
R.KALAIMATHI, J.

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To

1. The Motor Accident Claims Tribunal,
   Vaniyambadi

2. The Section Officer,
   VR Section,
   High Court, Madras.

Pre-Delivery Judgment made in
C.M.A.No.2545 of 2023

25.10.2024