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CMA.(MD)No.92 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 15/07/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

CMA (MD) No.92 of 2022

and

CMP (MD) No.834 of 2022

M/s.Tamilnadu State Transport Corporation Ltd.,
Rep by its General Manager,
Nagercoil. : Appellant/Respondent

Vs.

1.Geetha
2.Ajitha
3.Aji
4.Jeslin : Respondents/Petitioners

PRAYER:-Civil Miscellaneous Appeal is filed under section 173 of the Motor Vehicle Act, 1988, to call for the records relating to the award and decreetal order, dated 19/11/2020 passed in MCOP No.1543 of 2019 by the Motor Accident Claims Tribunal (Principal District Judge), Tirunelveli and to set aside the same.

For Appellant : Mr.R.Raja Mohan

For Respondents : Mr.P.Samuel Gunasingh

JUDGMENT

This Civil Miscellaneous Appeal is filed seeking to set aside the award, dated 19/11/2020 passed in MCOP No.1543 of 2019 by the Motor Accident Claims Tribunal (Principal District Judge), Tirunelveli.



2. The facts in brief:-

On 14/09/2019 at about 07.00 pm, the deceased Jebarson was riding his motor cycle bearing registration No.TN-75-D-4326 near WCC Palace Road, Raj Enterprises keeping left. At that time, a Transport Corporation Bus bearing registration No.TN-45-N-3151 was driven by its driver in rash and negligent manner and hit the two wheeler. He fell down, sustained injuries and died on the spot.

3.A case in Crime No.74 of 2019 was registered against the driver of the Bus by the Traffic Investigation Wing, Nagercoil Police Station. Seeking compensation of Rs.40,00,000/-, the claim petition was filed by the dependents.

4.That was resisted by the appellant herein stating that the occurrence took place because of the rash and negligent riding on the part of the deceased; He suddenly crossed the road without minding the traffic and hit the appellant Corporation Bus. So, the deceased was responsible for the occurrence and not the appellant driver. Apart from that, other customary denials were made.



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5.Before the Tribunal, on the side of the claimants, 2 witnesses were examined and 10 documents were marked. On the side of the appellant Transport Corporation, no oral and documentary evidence was adduced.

6.At the conclusion of the enquiry process, the Tribunal recorded a finding on the basis of the oral evidence of PW2 that it occurred due to the rash and negligent driving on the part of the appellant Bus driver.

7.Regarding compensation, the age of the deceased was fixed at 19 on the basis of the Ex.P2 and took the notional income at Rs.10,000/-. To that, 40% of the future prospects was added and finally, after deducting half of the amount towards living and personal expenses, it arrived at Rs.7,000/- per month. Multiplier '18' was adopted and finally, the following amount was arrived as per the tabulation given hereunder:-

Loss of dependency	Rs.15,12,000/-
Funeral expenses	Rs. 15,000/-
Loss of estate	Rs. 15,000/-
Total	Rs.15,42,000/-



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8.Challenging the same, this appeal is preferred by the appellant stating that the deceased without wearing helmet, suddenly crossed the road and invited the occurrence. So, contributory negligence ought to have been fixed upon the deceased also. Regarding the compensation no argument was advanced.

9.Regarding the first aspect of negligence, PW2 has stated in his evidence that only because of the rash and negligent driving on the part of the appellant Bus driver, the occurrence took place. Even though, the plea of sudden crossing and non wearing of helmet was taken by the appellant, the appellant driver was not examined. The reason for non examination is not explained. In the absence of any evidence on the side of the appellant, the evidence of PW2 namely the eye witness must be taken. The manner of the accident must also be taken into account. The deceased was riding the two wheeler in front of the appellant vehicle. So, naturally the appellant Bus Driver ought to have been taken proper care and caution while driving the heavy vehicle. It appears that he hit the deceased two wheeler behind.

10.Reading of the final report filed by the police after investigation shows that it is nothing, but hit



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behind. So, this itself indicates the rash and negligent driving on the part of the appellant Bus driver. So, I find absolutely no reason to differ from the finding recorded by the Tribunal.

11.Regarding the loss of income, no argument was advanced on the side of the appellant and no enquiry shall be made. But the Tribunal has committed a mistake in not awarding the filial consortium to the first claimant, who is the mother of the deceased. So, she is entitled for Rs.40,000/- under the head of filial consortium. Accordingly, the award of the Tribunal is re-calculated as hereunder:-

Head	Award of the Tribunal	Award of this court
Loss of dependency	Rs.15,12,000/-	Rs.15,12,000/-
Funeral expenses	Rs. 15,000/-	Rs. 15,000/-
Loss of estate	Rs. 15,000/-	Rs. 15,000/-
Filial consortium	-	Rs. 40,000/-
Total	Rs.15,42,000/-	Rs.15,82,000/-

13.In the result, this Civil Miscellaneous Appeal is **dismissed**, of course, with the above said modification. The award of the Tribunal is modified as **Rs.15,82,000/-**. The appellant Transport Corporation is directed to pay the above said modified amount together with interest at



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the rate of 7.5% pa. from the date of petition till the date of deposit. On such deposit, the claimants are entitled to get their share as per the apportionment of the Tribunal. The claimants are directed to pay the necessary court fee for the enhanced amount. No costs. Consequently connected Miscellaneous Petition is closed.

15/07/2024

Index:Yes/No
Internet:Yes/No
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To,

- 1.The Motor Accident Claims Tribunal/
Principal District Court,
Tirunelveli.
- 2.The Section Officer,
VR/ER Section,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN, J

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