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CMA.(MD)No.858 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 16/07/2024

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The Hon'ble Mr.Justice **G.ILANGO VAN**

CMA (MD) No. 858 of 2021

and

CMP (MD) No. 8023 of 2021

Tamil Nadu State Transport Corporation
Limited,
Kumbakonam Ltd., represented by
Managing Director, No.27,
Railway Station New Road,
Periyamilaguparai,
Trichy.

: Appellant/2nd Respondent

Vs.

1.Soundaravalli
2.Kulanjiyammal Ayyanar
3.Kalidass Amavasai
4.Arumugam
5.Janagaraj

: Respondents/Claimants

PRAYER:-Civil Miscellaneous Appeal is filed under section 173 of the Motor Vehicle Act 1988, to set aside the impugned award passed in MCOP No.169 of 2018, dated 04/12/2019 on the file of the MACT (Principal District Court), Karur and pass any other order.

For Appellant : Mr.M.Vishnuvarthanan

For Respondents : Mr.K.Sudaiyandi



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JUDGMENT

This Civil Miscellaneous Appeal is filed seeking to set aside the award passed in MCOP No.169 of 2018, dated 04/12/2019 by the Motor Accident Claims Tribunal (Principal District Court), Karur.

2.The facts in brief:-

On 01/01/2017 at about 08.10 pm, the deceased Ammavasai was returning in a bicycle to his house on Karur to Trichy main road after finishing his work from west to east direction. At that time, a Transport Corporation Bus bearing registration No.TN-45-N-2605 was driven by its driver in a rash and negligent manner behind him and hit the deceased. As a result of which, he sustained grievous injuries, taken to the Amaravathi Hospital, Karur, later to the Madurai Rajaji Government Hospital. But on the way to the hospital, he died.

3.A case in Crime No.810 of 2017 was registered by the Pasupathipalayam Police Station for the offences under sections 279 and 304(A) IPC. He was aged about 54 years at the time of the occurrence and earning Rs.15,000/- per month by working in a Furniture Mart called 'Karur Akkaramman Furniture Mart'. Claiming compensation amount of Rs.30,00,000/-, the claim petition was filed.



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4.That was resisted by the appellant herein by filing counter stating that only because of rash and negligent act on the part of the deceased, the occurrence took place; He lost control over his bicycle, the handle bar of the cycle hit on the left side body of the Bus.

5.Before the Tribunal, on the side of the claimants, 3 witnesses were examined and 4 documents were marked. On the side of the Transport Corporation, 4 witnesses examined and 5 documents marked.

6.At the conclusion of the enquiry process, the Tribunal on the basis of the evidence of PW2, who is the eye witness recorded a finding that the occurrence took place because of the rash and negligent act on the appellant Bus driver.

7.Regarding the compensation amount, the monthly income was taken as Rs.9,000/-. After deducting usual deductions towards personal and living expenses, the monthly income was fixed at Rs.6,750/-. By adopting multiplier '9', the Loss of Dependency was arrived at Rs.7,29,000/-. To that, conventional amounts were added. Totally, it arrived the compensation amount as per the tabulation given hereunder:-



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Loss of future income	Rs.7,29,000/-
Loss of consortium	Rs. 40,000/-
Loss of estate	Rs. 15,000/-
Funeral expenses	Rs. 15,000/-
Transport expenses	Rs. 10,000/-
Loss of love and affection	Rs.1,00,000/-
Total compensation awarded	Rs.9,09,000/-

8.Challenging the award, the appellant Transport Corporation has preferred this appeal stating that the deceased was aged about 58 years and the multiplier adopted by the Tribunal was wrong.

9.Regarding the negligent aspect, no argument was advanced. However, in order to set right the records, the negligent aspect has to be considered.

10.It is a case of hit behind. A simple case of the appellant is that only because of the rashness on the part of the deceased, he fell down before the running vehicle and sustained injuries.

11.On the side of the appellant, 4 witnesses were examined. RW1 is the driver of the Transport Corporation Bus. He has stated that the vehicle was not involved in the occurrence and only third party vehicle namely TATA ACE hit the cyclist and fled away from the place. The



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other two witnesses corroborating the evidence of RW1. RW4 was the Investigating Officer in the criminal case registered against the Bus driver. From his investigation, it was found that no third party vehicle was involved.

12.On the side of the claimants, 2 eye witnesses were examined namely PW2 and PW3. From their evidence, it is seen that the occurrence took place involving the appellant vehicle. If really, the appellant vehicle is not involved in the occurrence, they would have stated so in the counter itself. No such plea was raised in the counter that the third party vehicle is involved. Now only a new plea has been raised, which may not be permissible.

13.As it is a case of hit behind, naturally the appellant vehicle owns responsibility for the occurrence on the negligent driving. So, the findings recorded by the Tribunal on that aspect requires no reconsideration.

14.Regarding the compensation amount, the Tribunal committed some mistakes.



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15.It is the case of the claimants that the deceased was working as an employee in a private Furniture Mart called 'Karur Akkaramman Furniture Mart' and earning Rs.15,000/-. But there was no documentary evidence to prove the same. Considering the age, the notional income was fixed by the Tribunal at **Rs.9,000/-** cannot be considered to be excessive. But the Tribunal has not added any amount towards future prospects. As per the judgment of the Hon'ble Supreme court in National Insurance Company Limited Vs. Pranay Sethi and others (2017)16 SCC 680, 10% is to be added towards future prospects, considering the age of the deceased. If 10% is added towards future prospects I.e., Rs.900/- (Rs.9,000/- x 10/100), the income would be Rs.9,900/- (Rs.9,000 + 900). Since the dependents are 5, 1/4th is to be deducted. If 1/4th is deducted towards personal and living expenses of the deceased, it comes to Rs.7,425/-. The Tribunal was right in applying multiplier '9. Thus the compensation awarded by the Tribunal towards loss of dependency is modified to **Rs.8,01,900/-** (Rs.7,425/- x 12 x 9).

16.Regarding the conventional amounts, in the light of the decision of the Hon'ble Supreme Court in **National Insurance Company Ltd., Vs. Pranay Sethi and others (2017(2)TN MAC 609 SC)**, it requires recalculation as per the tabulation given as under:-



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Head	Award of the Tribunal	Award of this court
Loss of future income/dependency	Rs.7,29,000/-	Rs. 8,01,900/-
Loss of consortium	Rs. 40,000/-	Rs. 40,000/-
Loss of estate	Rs. 15,000/-	Rs. 15,000/-
Funeral expenses	Rs. 15,000/-	Rs. 15,000/-
Transport expenses	Rs. 10,000/-	-
Loss of love and affection	Rs.1,00,000/-	-
Filial consortium	-	Rs. 1,60,000/-
Total	Rs.9,09,000/-	Rs.10,31,900/-

17.In the result, this Civil Miscellaneous Appeal is partly allowed. The award of the Tribunal is modified as **Rs.10,31,900/-**. The Appellant Transport Corporation is directed to pay the above said modified amount together with interest at the rate of 7.5% 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 of the Tribunal. The claimants are directed to pay necessary court fee for the enhanced amount. No costs. Consequently connected Miscellaneous Petition is closed.

16/07/2024

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

1.The Motor Accident Claims Tribunal/
District Court, Karur.

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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