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CMA.(MD)No.343 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 07/06/2024

CORAM

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

CMA (MD) No. 343 of 2022

and

CMP (MD) No. 3159 of 2022

The Managing Director,
Tamilnadu State Transport Corporation
(Kumbakonam) Limited,
Pudukottai Town and District. : Appellant/Respondent

Vs.

1.Kalaiyarasi
2.Nandhini
3.Kalpana
4.Vijay
5.Dhanapackiyam : Respondents/Claimants

PRAYER:-Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, to set aside the impugned award passed in MCOP No.275 of 2018, dated 20/11/2020 on the file of the MACT (Additional District Court), Pudukottai and pass any other orders.

For Appellant : Mr.P.M.Vishnuvarthanan

For Respondents : Mr.R.Balakrishnan

JUDGMENT

This Civil Miscellaneous Appeal is filed seeking an order to set aside the impugned award passed in MCOP No.275 of 2018, dated 20/11/2020 by the MACT (Additional District Court), Pudukottai.



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2. The facts in brief:-

On 26/01/2018, the deceased Natarajan travelling as a pillion rider in a two wheeler bearing registration No.TN-55-AB-7558 to Authanakottai from east-west direction. At about 11.50 am near the place of occurrence, a Transport Corporation Bus bearing registration No.TN-55-N-0404 was driven by its driver in a rash and negligent manner and hit the two wheeler. Natarajan fell down and the Bus ran over him causing death on the spot itself.

3. Over the occurrence, a case in Crime No.12 of 2018 was registered against the Bus Driver by the Town Police Station, Pudukkottai. Claiming compensation of Rs.67,00,000/-, the dependents filed the petition.

4. That was resisted by the appellant herein by filing a counter stating that by following proper rules, the appellant Bus driver tried to overtake the two wheeler by making warning and signal. But in-spite of that, the rider of the two wheeler could not control the speed, lost the control and fell down.

5. Before the Tribunal, on the side of the claimants, 3 witnesses examined and 14 documents marked. On the side



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of the Appellant Transport Corporation, one witness was examined and no document was marked.

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6.At the conclusion of the trial process, regarding the first point of negligence, the Tribunal recorded a finding that on the basis of the evidence of PW2, the eye witness, the rash and negligent driving on the appellant driver was proved.

7.A criminal case was registered in Crime No.12 of 2018 against the appellant Bus driver. Now the case is also charge sheeted pending for trial before the criminal court namely the Judicial Magistrate No.I, Pudukottai. The manner of accident must also be taken into consideration for deciding the negligent aspect. As admitted by the appellant in the counter, it is seen that the accident or occurrence took place in the process of overtaking by the above said appellant driver. Overtaking the another vehicle in an improper manner will clearly amount to rash and negligent driving. Simply because, it is stated by the appellant driver namely RW1 that only because of the un-controllable speed of the rider of the two wheeler the occurrence took place, is not at all acceptable. He has stated in his evidence that he did not try to overtake the two wheeler. But actually



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in the counter, it has been stated that the accident has taken place in the process of overtaking. RW1 is not coming to the court with clean hands. As mentioned above, in the process of overtaking only, the occurrence said to have taken place. The manner in which the occurrence took place indicates the rash and negligence of RW1. So that portion of the finding requires no interference.

8.Regarding the quantum, the Tribunal found that the deceased was doing milk vending business. So no convincing evidence can be expected. But Ex.B14 was produced by the claimants to show that the deceased was supplying milk to various shops namely bakery, tea stall, hotel, etc. But this document was disbelieved, since no proper seal of the Establishments were available. But however, considering the fact that the deceased was aged about 50 and head of the family consisting of wife and children, it fixed the monthly notional income at Rs.10,000/-. Considering the above said factual position and the position of the deceased, I am of the considered view that fixation of Rs.10,000/- per month is not excessive. The age of the deceased as noted above was 50, proper multiplier of 13 was taken. By adding 25% towards future prospects and after deducting 1/4th towards personal and living expenses, it arrived at the Loss of



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Income as Rs.14,62,500/-. To that effect, customary amounts of loss consortium, filial and parental consortium, transportation and funeral expenses were added as calculated below.

Loss of Income	Rs.14,62,500/-
Loss of consortium to the 1 st claimant Rs.40,000/- and Loss of Estate	Rs. 55,000/-
Parental/Filial Consortium to the claimants 2 to 4	Rs. 30,000/-
Transportation charges	Rs. 10,000/-
Funeral Expenses	Rs. 15,000/-
Total	Rs.15,72,500/-

9.On the quantum also, it is not on the higher side. So no interference is called for.

10.In the result, this Civil Miscellaneous Appeal is **dismissed**. No costs. Consequently, connected Miscellaneous Petition is closed.

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

1.The Motor Accident Claims Tribunal/
Additional District Judge,
Pudukottai.

2.The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN, J

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