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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.01.2024

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THE HON'BLE MR.JUSTICE S.SRIMATHY

C.M.A(MD)No.1031 of 2021

and

C.M.P(MD)No.9689 of 2021

The Managing Director,
Metropolitan Transport Corporation (Chennai),
Pallavan House,
Anna Salai,
Chennai – 600 002.

... Appellant

Vs.

1. Kannan
2. Kalaiselvi
3. M/s.Oriental Insurance Company Limited,
CB 02, Tiruchy,
73/B-1, Salai Road,
Lakshmi Complex,
Thillai Nagar,
Tiruchirappalli – 18.

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, against the Award and Decree made in M.C.O.P. No.1503 of 2014 dated 20.01.2020 on the file of the Motor Accident Claims Tribunal/Special District Court, Tiruchirapalli.



For Appellant : M/s.P.Prabhakaran
For R-1 & R-2 : M/s.Rajeswari
For R-3 : Mr.C.Jawahar Ravindran

JUDGEMENT

This Appeal is filed by the Transport Corporation against the Award and Decree made in M.C.O.P.No.1503 of 2014 dated 20.01.2020 on the file of the Motor Accident Claims Tribunal/Special District Court, Tiruchirapalli.

2. The deceased was an employee in TCS Company Limited. He has joined in the said company on 16.02.2004. The accident has occurred on 14.09.2010. The nature of accident is that while the deceased was riding his two-wheeler, the bus bearing belongs to the Transport Corporation dashed against the deceased and the deceased hit the barricade and fell down on the bus which was coming behind the two-wheeler and had running over the deceased. Therefore, the Transport Corporation is claiming that there is a contributory negligence on the part of the deceased. However, the claimants have stated that the bus hit the two-wheeler behind back and he hit the barricade and fell down and thereafter the bus had running over the deceased.



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3. On perusal of the First Information Report it is seen that the version of the claimant is stated in the FIR. During investigation also, the version of the claimant is confirmed. However, the Learned Counsel appearing for the Transport Corporation vehemently submitted that when the bus behind hit the two-wheeler, then right side of the front wheel alone would run over the deceased, but in the present case the back wheel of the bus had run over the deceased. He further vehemently submitted that it is purely negligent act of the deceased. He had hit himself over the barricade and fell down on the road and hence there is no negligence in their part. For which the Learned Counsel appearing for the Transport Corporation relied on the deposition of the Driver of the Transport Corporation. Even though the driver is an interested party to the Transport Corporation, this Court is of the considered opinion that there is a possibility to support the contention of the Transport Corporation. Therefore, there ought to be some deduction from the total compensation.

4. The next contention of the appellant is that the Tribunal has granted compensation under Filial consortium as well as love and



affection. Since the parents were granted a sum of Rs.80,000/- under each head and the same ought to be reduced. Therefore, this Court is declining compensation under Filial consortium. However, compensation granted under the head of love and affection compensation is confirmed.

5. Based on the above discussion, this Court is reducing only Filial consortium compensation to the tune of Rs.80,000/-. And for contributory negligence a sum of Rs.1 Lakh is reduced. The Tribunal has awarded total compensation is Rs.65,18,487/- and this Court is reducing a sum of Rs.1,80,000/-from the total compensation.

6. Accordingly, the claimants are entitled for compensation as follows:

S. No	Description	Amount awarded by		Award confirmed / enhanced/granted
		Tribunal	This Court	
1	For Loss of income	Rs.63,22,487/-	Rs.63,22,487/-	Confirmed
2	For Filial Consortium	Rs. 80,000/-	--	Modified
3	For Love and Affection	Rs. 80,000/-	Rs. 80,000/-	Confirmed
4	For Transport Expenses	Rs. 6,000/-	Rs. 6,000/-	Confirmed
5	For Funeral expenses	Rs. 15,000/-	Rs. 15,000/-	Confirmed
6	For loss of Future prospectus	Rs. 15,000/-	Rs. 15,000/-	Confirmed
7	For contributory negligence	--	Rs. 1,00,000/-	Granted
Total		Rs.65,18,487/-	Rs.63,38,487/-	



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7. Accordingly, this Civil Miscellaneous Appeal is partly allowed and the Award and Decree made in M.C.O.P. No.1503 of 2014 dated 20.01.2020 on the file of the Motor Accident Claims Tribunal/Special District Court, Tiruchirapalli. The claimants are entitled to a sum of Rs.63,38,487/-as compensation with interest at 7.5% p.a., from the date of claim petition till the date of realization. The 1st claimant is entitled to a sum of Rs.28,38,487/-and the 2nd claimant is entitled to a sum of Rs.35,00,000/-as compensation. The Appellant has already deposited 50% of the award amount. The balance amount shall be deposited within a period of 12 weeks from the date of receipt of a copy of the Order. If the appellant is not depositing within the stipulated time as fixed by this Court, the same shall carry an interest of 6%. On such deposit, the claimants are entitled to withdraw the same by way of filing appropriate petition. No Costs. Consequently, connected miscellaneous petition is closed.

31.01.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To
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1. The Motor Accident Claims Tribunal/
Special District Court,
Tiruchirapalli.
2. The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

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Order made in
C.M.A(MD)No.1031 of 2021

31.01.2024