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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 03.01.2024

CORAM :

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

AND

THE HONOURABLE Mr. JUSTICE C.KUMARAPPAN

C.M.A(MD)No.401 of 2018

and

C.M.P(MD)No.5102 of 2018

The Depot Manager
Korutla T.S.R.T.C Korutla
Koutla, Kareem Nagar,
Telangana State

... Appellant/Respondent

Vs.

1.D.Sumathi
2.D.Venkateswaran
3.Minor D.Venkatesamoorthy
4.Minor D.Venkateswari
5.K.Govindammal

... Respondents/Claimants

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decreetal order made in MCOP No.1094 of 2016 dated 05.01.2018, by the Motor Accidents Claims Tribunal/Special District Court, Thanjavur.



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For Appellant : M/s.I.Robert Chandrakumar
for M/s.B.Anandan
For R1 to R4 : M/s.M.Viji

J U D G M E N T

Challenging the award passed by the Motor Accidents Claims Tribunal/Special District Court, Thanjavur, passed in M.C.O.P.No.1094 of 2016, the present Civil Miscellaneous Appeal is preferred by the Transport Corporation.

2.The brief facts, leading to the filing of this Civil Miscellaneous Appeal, are as follows:

(i) On 25.07.2016, while the deceased Dharmaraj was proceeding in his two wheeler, bearing Registration No.AP-31-Q-4147 in Jawahar Nagar, near Namasthe Telangana Printing Press Road, Outskirts of Thumukunta Village, at that time, the driver of the respondent's bus bearing Registration **No.AP-1-5z-0119** drove the bus in a rash and negligent manner and dashed against the two wheeler. Due to which, the said Dharmaraj sustained grievous head injuries and died on the spot. Hence, the compensation of Rs.1,20,00,000/- was claimed by the claimants.



(ii) The respondent filed a counter affidavit before the Tribunal stating that there is no negligence on the part of the driver of the bus and the deceased travelled without wearing helmet and met with an accident.

(iii) The wife, three children, out of which, two are minors and mother are the claimants and sought for compensation for the death of Dharmaraj.

3. Before the Tribunal, on the side of the claimants, P.Ws.1 to 3 were examined and Exs.P1 to P24 were marked. On the side of the respondents, no witness was examined and document was marked.

4. The Tribunal, after analyzing the entire evidence available on record, awarded a compensation. Challenging the said award, the present appeal is filed.

5. The Tribunal, after considering the material placed before for it and also considering the age, multiplier, income and dependency, had awarded a sum of Rs.54,39,067/- (Rupees Fifty Four Lakhs Thirty Nine Thousand Sixty Seven only) with interest at the rate of 7.5% p.a. The Tribunal has taken note of



the fact that the deceased being a Police Constable travelling in a two wheeler without wearing helmet, has caused death due to the head injury and therefore, deducted 10% towards contributory negligence.

6. The learned counsel appearing for the appellant, apart from arguing the other points raised in the grounds of appeal, submitted that the contributory negligence having been ascertained, the trial Court should have deducted 20% of the compensation amount, but it had deducted only 10% and the same is to be revised.

7. Per contra, the learned counsel appearing for the claimants submitted that at the time of accident, the age of the deceased was 44 years and he left behind three children and old age mother. At the time of his death, two of the children were minors. Therefore, the deduction of 10% towards contributory negligence, is suffice and there should not be any further interference.

8. This Court, though convinced with the submission made by the learned counsel for the respondents, taking note of the fact that the deceased being a Police Head Constable, had to obey the law at least for his interest and for his family interest, should have worn helmet, while travelling in a two



wheeler, which he did not do so. Therefore, as rightly found by the tribunal there is a contributory negligence on the part of the deceased. Hence, there cannot be any sympathy for a wrong doer, that too, when it comes to monetary compensation. Therefore, this Court on balancing the merits of either side, fixed the contributory negligence at 15% instead of 10% and accordingly, award is modified.

9. It is submitted by the learned counsel appearing for the appellant that the entire award amount along with interest had already been deposited and out of which, the claimants had already withdrawn 50% of the award amount. In such circumstances, it is suffice to permit the appellant herein to withdraw a sum of Rs.2,72,000/- (Rupees Two Lakhs Seventy Two Thousand only) with proportionate interest towards contributory negligence and the balance amount to be distributed among the claimants proportionately as apportioned by the tribunal. No costs. Consequently, connected miscellaneous petition is closed.

(G.J.,J.) (C.K.,J.)
03.01.2024

NCC:Yes/No
Index:Yes/No
Internet:Yes/No



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DR G. JAYACHANDRAN,J.
AND
C.KUMARAPPAN,J.
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To

- 1.The Family Court,
Madurai,
Madurai District.
- 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

C.M.A(MD)No.401 of 2018
and
C.M.P(MD)No.5102 of 2018

03.01.2024