



CMA.(MD)No.845 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 02/08/2024

CORAM

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

CMA (MD) No. 845 of 2022

and

CMP (MD) No. 8031 of 2022

The Managing Director,
Tamilnadu State Transport Corporation,
Periyamilaguparai,
Trichy.

: Appellant/Respondent

Vs.

1.Parameswari

2.Minor Sarankumar

: Respondents/Claimants

(Minor 2nd respondent rep.

by his Mother/Natural Guardian)

PRAYER:- Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the impugned award passed in MCOP No.18 of 2016 on the file of the MACT (Special District Judge), Tiruchirapalli, dated 20/08/2019 and pass any other order.

For Appellant : Mr.P.M.Vishnuvarthanan

For Respondents : Mr.N.Sudhagar Nagaraj

JUDGMENT

This Civil Miscellaneous Appeal is filed seeking to set aside the award, dated 20/08/2019 passed in MCOP No. 18 of 2016 by the Motor Accident Claims Tribunal/Special District Court, Trichy.

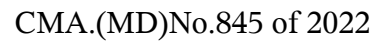


2. The facts in brief:-

On 23/05/2015, the deceased Shankar waiting near the Pongai Oil Mill on Trichy-Madurai main road in the Bus stop. At that time, a Bus bearing registration No.TN-45-N-2029 was driven by its driver came from north to south direction in a rash and negligent manner and hit the deceased. The occurrence took place at about 09.30 pm. Because of the accidental injuries, he was taken to the hospital, but died on the same day.

3.A case in Crime No.141 of 2015 was registered by the Cantonment Police Station, Trichy, for the offence under section 304(A)IPC against the driver of the Bus. He was aged about 27 years and working as Mason and earning not less than Rs.20,000/- per month. Claiming compensation amount of Rs.70,00,000/-, the claim petition was filed.

4.That was resisted by the appellant herein by filing counter stating that the occurrence took place because of the negligent act on the part of the deceased; When the appellant Bus driver was careful in his driving, the deceased suddenly crossed the road without minding the traffic and invited the accident. So, the appellant driver is not responsible for the occurrence.



6. At the conclusion of the trial process, regarding the first aspect of negligence, the Tribunal recorded a finding that the occurrence took place because of the appellant Bus driver.

7.Regarding the compensation, the age of the deceased was fixed at 27 on the basis of the entry made in the postmortem report. The monthly income was fixed at Rs.12,093/- notionally. To that, 40% was fixed as future prospects. The total monthly income was fixed at Rs.16,930/-. 1/3rd was deducted towards personal and living expenses and the Loss of Dependency was fixed at Rs.23,02,548/-. To that, conventional amounts were added and finally, it awarded the total compensation of Rs.24,12,548/- as per the tabulation given hereunder:-

Loss of Dependency	Rs.23,02,548/-
Loss of consortium	Rs. 40,000/-
Filial consortium	Rs. 40,000/-
Loss of Estate	Rs. 15,000/-
Funeral expenses	Rs. 15,000/-
Total	Rs.24,12,548/-



WEB COPY



CMA.(MD)No.845 of 2022

8.Challenging the same, this appeal is preferred by the Tamil Nadu State Transport Corporation stating that the occurrence took place in the middle of the road; it indicates that the occurrence took place because of the sudden crossing made by the deceased. So, he also contributed to the occurrence. Apart from that, it is also submitted that there was no evidence to show that the deceased was working as Mason. So, the notional income fixed at Rs.12,093/- by the Tribunal is on the higher side.

9.The learned counsel appearing for the respondents would submit that only because of the rash and negligent driving on the part of the appellant Bus driver, the occurrence took place; There was no sudden crossing by the deceased; The compensation amount was reasonably fixed by the Tribunal. According to him, no interference is called for.

10.Regarding the negligence aspect, even though it has been stated that it is a sudden crossing, no other evidence is available on the side of the appellant to show that the deceased without minding the traffic, suddenly crossed the road and invited the occurrence.



WEB COPY



CMA.(MD)No.845 of 2022

11.RW1 was the driver during the relevant of time in the Bus. PW2 is the eye witness to the occurrence. He has stated that the deceased was standing on the left side of the road. At that time, the appellant Bus driver drove it in a rash and negligent manner and hit the deceased. A suggestion was made to him that the deceased was suddenly crossing the road negligently and invited the occurrence.

12.RW1 also repeated the counter averments in his evidence. He also admits that the investigation has been completed and the final report was also filed against him. In the absence of any evidence to show that the deceased suddenly crossed the road and invited the accident, the evidence of PW2 the independent witness has to be relied.

13.The appellant Bus driver, who was driving the heavy vehicle ought to have been careful and vigilant. If he drove the vehicle in a careful and caution manner, he would have averted the accident. So, the findings recorded by the Tribunal requires no interference on that aspect. Regarding the quantum also, the amount was reasonably fixed by taking into the notional income at Rs.12,093/-. We cannot expect the direct evidence to show the monthly income of the deceased, who is stated to be working as 'Mason'.



WEB COPY



CMA.(MD)No.845 of 2022

14.FIR was registered on the basis of the complaint given by Kathirvel, the co-brother of the deceased. He is also working as Mason. Since the earlier statement is available to show the job nature of the deceased, it can be taken as correct, considering that fact the monthly income was fixed at Rs.16,930/-, which I find no reason to differ. Regarding the age, there was no direct evidence. So, the entry made in the postmortem report was taken and fixed the age as 27. Since he was aged about 27, proper multiplier was '17'. From that, 1/3rd was deducted towards personal and living expenses. The Loss of Dependency was fixed at Rs.23,02,548/-. To that, conventional amounts were added. I am of the considered view that the total compensation fixed by the Tribunal is just and reasonable. So, no interference is called in the award passed by the Tribunal.

15.In the result, this civil miscellaneous appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

02/08/2024

Index:Yes/No
Internet:Yes/No
er



CMA.(MD)No.845 of 2022

To,

WEB COPY

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



WEB COPY



CMA.(MD)No.845 of 2022

G.ILANGOVAN, J

er

CMA (MD) No. 845 of 2022

02/08/2024