

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.07.2015

CORAM :

THE HONOURABLE MR. JUSTICE N.KIRUBAKARAN

CMA No.1551 of 2015 and
M.P.No.1 of 2015

The Managing Director,
Tamil Nadu State Transport Corporation,
Villupuram Division III,
Kancheepuram ...Appellant/1st Respondent

vs.

1.R.Meenakshi
2.Minor R.Akash Rajan
(minor respondent is represented
by his natural guardian/next friend ,
Mother 1st respondent Meenakshi)

... Respondents 1 & 2 / Petitioners

3.Lalitha ... 3rd Respondent / 2nd Respondent

Prayer :- Civil Miscellaneous Appeal filed under Section 173 of
Motor Vehicles Act against the judgment and decree passed by the
Motor Accident Claims Tribunal, District Judge, District Court II,
Kancheepuram in M.C.O.P.No.827/2010 dated 12.08.2014.

For Appellant : Mr.P.Paramasivados

J U D G M E N T

This appeal has been preferred by the Transport Corporation
against the award of Rs.7,57,000/- as compensation to the
respondents/claimants for the death of one Rameshkumar, aged about 34
years alleged to be running a Tiffen Stall and earning a sum of
Rs.15,000/- per month who died in the accident occurred on 10.03.2010.

2. Heard Mr.P.Paramasivados, learned counsel appearing for
the appellant/transport corporation. He would submit that there is no
concrete evidence to prove that the Driver of the Transport
Corporation Bus was negligent. Even the Tribunal held that two views
were possible and therefore, it decided in favour of the claimants.
The learned counsel would rely upon Ex.P.1-F.I.R., to show that the
negligence was on the part of the Driver of the Bus. However, a
perusal of the records would show that an eye witness (P.W.2) was

examined and he categorically stated that the Bus belonging to the appellant Transport Corporation was driven rashly and negligently and hit against the two wheeler, in which, the deceased was traveling. When such a categorical evidence was available, in the absence of any contra evidence, the Tribunal rightly found that the Bus Driver was negligent. The said finding cannot be disturbed.

3. As far as Ex.P.1 - F.I.R., is concerned, Mr.Paramasivados, learned counsel for the appellant would point out that the F.I.R., was filed against the deceased. There is no surprise in this regard as Ex.P.1 - F.I.R., was given by the Driver of the Bus and it cannot be expected that the Driver will give complaint against himself. As expected, he gave complaint only against the deceased. Therefore, the F.I.R., cannot be relied upon in any event. The F.I.R., can be relied upon only for the purpose of proving the accident and F.I.R., is not an encyclopedia. It is the allegation which requires to be investigated and thereafter only the final report has to be filed. Even if the Criminal Court comes to the conclusion that the accident occurred due to the negligence of one person, it cannot bind upon either the Motor Accident Claims Tribunal or the Civil Court. Therefore, the said contention is rejected.

4. The Tribunal taking Rs.4,500/- as a monthly income in the absence of any documentary evidence to prove the income of the deceased and applied multiplier of 15 deducted 1/3rd towards his personal expenditure and determined the loss of income at Rs.7,02,000/- along with future prospectus. If Rs.4,500/- is taken as monthly income for the age of the 40, 50% is required to be added as future prospectus whereas, the Tribunal erroneously added 30% as future prospectus. The Tribunal rightly determined the age of the deceased as 40 as per Ex.P.3 Postmortem certificate however, calculated the multiplier as 15. As per Sarla Verma & Ors vs Delhi Transport Corpn. reported in 2009 (2) TANMAC 1, for the age of 40, the correct multiplier is 16.

$$\text{Rs.4,500/-} + 50\% - 1/3^{\text{rd}} \times 12 \times 16 = 8,64,000/-$$

5. The 1st respondent, wife of the deceased was awarded only a sum of Rs.20,000/- towards loss of consortium. She has lost her husband at the age of 23 years. Loosing husband itself is very painful, that too at the age of 23 years she lost her husband's love and companion. Following the judgment of the Hon'ble Supreme Court in Rajesh & Ors. vs. Rajbir Singh & ors. reported in 2013 (3) CTC 883, a sum of Rs.1,00,000/- is hereby awarded towards loss of consortium. Similarly, only a sum of Rs.20,000/- is awarded towards loss of love & affection to the 2nd respondent/claimant who was aged 10 years at the time of accident. He lost his father's love, care and affection which cannot be compensated in terms of money. However, this Court enhances the amount to Rs.50,000/- towards loss of love & affection to the 2nd respondent. Rs.5,000/- awarded towards funeral expense is hereby enhanced to Rs.20,000/- along with transport

expenses. Thus, the amount of Rs.7,57,000/- awarded by the tribunal is hereby enhanced to Rs.10,34,000/-, rounded off to Rs.10,30,000/-, break-up as follows -

(1) Loss of income	...	Rs. 8,64,000/-
(2) Loss of consortium	...	Rs. 1,00,000/-
(3) Loss of love & affection to the 2 nd respondent	...	Rs. 50,000/-
(4) Transportation charges & Funeral expenses	...	Rs. 20,000/-
Total	...	Rs.10,34,000/-
		=====

Rounded off to Rs.10,30,000/-.

The rate of interest awarded by the tribunal @ 7.5% is very reasonable and the same is confirmed.

6. Though the appeal has been preferred by the transport corporation against the award of Rs.7,57,000/-, re-appreciating the evidence on record, invoking Order 41 Rule 33, this Court, suo mottu enhances the compensation to Rs.10,30,000/-, in an endeavour to award a just compensation, even in the absence of appeal/cross objection filed by the respondents/claimants.

7. In the result, this Civil Miscellaneous Appeal is dismissed enhancing the compensation to Rs.10,30,000/- alongwith interest @ 7.5% per annum from the date of petition till the date of deposit. No costs. Consequently, connected Miscellaneous Petition is closed.

8. The appellant/transport corporation is directed to deposit the entire amount awarded by this Court, alongwith interest and costs within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the 1st respondent/claimant is permitted to withdraw Rs.6,00,000/- alongwith proportionate interest and cost. The 2nd respondent/claimant is entitled to a sum of Rs.4,30,000/- alongwith proportionate interest and costs. The tribunal is directed to deposit the share of the 2nd respondent/minor claimant in any one of the Nationalised Bank, in an interest bearing Fixed Deposit, till he attains majority. The 1st respondent/claimant is permitted to withdraw the accrued interest on the fixed deposit,

once in six months. In the event of failure on the part of the appellant/Transport Corporation to deposit the entire award amount alongwith interest and costs, on the aforesaid date, the Chairman cum Managing Director, the Financial Advisor and Chief Accounts Officer shall appear before this Court on the said date.

9. Since the appeal has been dismissed at the admission stage itself and the enhancement is being made, the respondents/claimants may not be in a position to know the enhancement of compensation. Therefore, registry is directed to send a copy of this judgment directly to the respondents/claimants at free of cost. The Tribunal is directed to collect the requisite court fee for the enhanced compensation from the respondents/claimants, within a period of two weeks from the date of receipt of a copy of the judgment.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

jbm
To
The Motor Accident Claims Tribunal,
District Judge, District Court II,
Kancheepuram.

+ 1 cc to Mr.P. Paramasivados, Advocate Sr.39684

Copy to: 1. R. Meenakshi
W/o. Rameshkumar and minor R. Akash Rajan
No.40, Muthialpet Village,
Kancheepuram Taluk.

2. The Managing Director,
Tamil Nadu State Transport Corporation,
Villupuram Division-III, Kancheepuram.

(for the appearance of the Chairman
and Managing Director, the Financial
Advisor and Chief Accounts Officer in
case of default of remittance)

3. The Sub Assistant Registrar,
Judicial Section, High Court, Madras-104

CMA No.1551 of 2015

EU 14.10.15