

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.07.2015

Coram :

The Hon'ble Mr.Justice N.KIRUBAKARAN

C.M.A.No.1621 of 2015
and M.P.No.1 of 2015

The Managing Director,
Tamil Nadu State Transport
Corporation Limited,
Villupuram Division-2,
Rangapuram, Velore - 9.

.. Appellant / Respondent

vs

1.Tmt.Sangammal
2.Sathiaseelan
3.Tmt.Santhi
4.R.Sasikala
5.V.Shanmugam
6.M.Nageswari
7.N.Nithishkumar

.. Respondents / Petitioners

Civil Miscellaneous Appeal filed u/s 173 of Motor Vehicles Act against the judgment and decree dated 03.09.2014 made in MCOP No.274 of 2012 on the file of Motor Accident Claims Tribunal, (Subordinate Judge), Tiruttani.

For Appellant : Mr.S.Sairaman

J U D G M E N T

The appeal has been preferred by the transport corporation against the award of Rs.4,98,200/- as compensation for the death of one G.Varadarajan aged about 61 years, a security guard alleged to be earning a sum of Rs.10,000/- per month.

2. Heard Mr.S.Sairaman, learned counsel appearing for the appellant/transport corporation. He would submit that the FIR filed against the driver of the deceased was closed as "mistake of fact" and therefore there cannot be any liability on the part of the driver of the transport corporation. However, a close scrutiny of the award would reveal that on 09.12.2011, while the deceased was riding his bicycle from Nemili to Sriperumbudur on the National Highway, he was hit by the bus belonging to the appellant/transport corporation driven in a rash and negligent manner resulting in death of the deceased. To prove the accident, Ex.P1-FIR was marked. No doubt, the FIR filed against the driver of the transport corporation bus,

after investigation was closed as "mistake of fact". Merely, the police authorities, after investigation closed the complaint, it does not automatically lead to the conclusion that there was no negligence on the part of the driver whereas PW2-eyewitness, categorically stated that it was because of the rash and negligent driving of the driver of the bus, the accident occurred. De hors, Ex.P1-FIR, the claimants proved the rash and negligent driving of the driver of the transport corporation bus through PW2-eyewitness. Therefore, the finding reached by the tribunal that the accident occurred because of the rash and negligent driving of the transport corporation bus is confirmed.

3. As per Ex.P2-Postmortem certificate, the age of the deceased was determined as 55 years. Though the claimants contended that the deceased was earning about Rs.10,000/- per month working as security guard, in the absence of any positive evidence, the tribunal, rightly determined the monthly income of the deceased at Rs.6,000/-. Even though it is very difficult to get a manual labourer for a sum of Rs.6,000/- in the year 2011, this Court is not inclined to increase the said amount. As per Ex.P2-Postmortem certificate, the age of the deceased was 55 years. For the age of the 55 years, the correct multiplier to be applied is 11. Even though the tribunal determined the age of the deceased as 55 years, wrongly applied multiplier 7. Therefore, the said mistake has to be corrected.

4. The size of the family is seven and therefore the tribunal rightly deducted $1/5^{\text{th}}$ towards personal expenses and determined the loss of income at Rs.4800/- [Rs.6000 less $1/5^{\text{th}}$]. The total loss of income applying the correct multiplier is as follows -

$$\text{Rs.6000 less } 1/5^{\text{th}} = \text{Rs.4,800} \times 12 \times 11 = \text{Rs.6,33,600/-}$$

5. The first respondent, being the wife of the deceased was awarded only a sum of Rs.15,000/- towards consortium and as per 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 awarded towards loss of consortium. However, respondents 2 to 7 were rightly awarded Rs.10,000/- each towards loss of love & affection and the same is confirmed. Similarly Rs.10,000/- awarded towards funeral expenses is confirmed. Thus, the award of Rs.4,98,200/- is hereby enhanced to Rs.8,03,600/-, rounded off to Rs.8,00,000/-, break-up as follows -

(1) Loss of income	...	Rs.6,33,600/-
(2) Loss of consortium	...	Rs. 60,000/-
(3) Funeral expenses	...	Rs. 10,000/-

Total	...	Rs.8,03,600/-
		=====

Rounded off to Rs.8,00,000/-.

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

6. In the result, the Civil Miscellaneous Appeal is dismissed enhancing the compensation from Rs.4,98,200/- to Rs.8,00,000/- even in the absence of any appeal / cross appeal by the respondents/claimants invoking Order 41 Rule 33, re-appreciating the evidence and applying correct law as on date in a endeavour to award a just compensation.

7. The appellant 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. Out of the award amount, the 1st respondent/claimant, wife of the deceased is permitted to withdraw Rs.2,00,000/- alongwith proportionate interest and costs and the respondents/claimants 2 to 7 are permitted to withdraw Rs.1,00,000/- each, alongwith proportionate interest and costs, after adjusting the amount already withdrawn, if any. 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.

8. 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 order directly to the respondents/claimants, 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 order.

Sd/-
सत्यमेव जयते

Assistant Registrar

//True Copy//

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Sub Assistant Registrar

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To

1.The Subordinate Judge,
Motor Accident Claims Tribunal,
Tiruttani.

2. The Chairman/Managing Director,
Tamil Nadu State Transport Corporation,
Villupuram District-2, Rangapuram, Vellore-9.

3. The Financial Advisor and Chief Accounts Officer,
Tamil Nadu State Transport Corporation,
Villupuram Division-2, Rangapuram, Vellore-9.

4. Tmt. Sangammal, W/o. Late Varadarajan.

5. Sathiyaseelan,
S/o. Lagte Varadarajan,

6.Tmt. Shanthi W/o. Anbalagan

7. R. Sasikala, S/o. Ramesh

8. V. Shanmugam, S/o. Late Varadarajan

9. M. Nageswari, W/o. Madhanram,

10. N. Nithish Kumar, S/o. Late Varadarajan

all are residing at Nallattur Village,
Tiruttani Taluk, Tiruvallur District.

as per order of this
court dt. 23.07.2015

+lcc to Mr.S. Sairaman, Advocate, S.R.No.37651

PUR(CO)
EU(20/08/2015)

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