

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.11.2015

CORAM:

THE HONOURABLE MR. JUSTICE T.RAJA

C.M.A.No.2553 of 2015

and

M.P.No.1 of 2015

The Managing Director,
Tamil Nadu State Transport
Corporation,
(Villupuram Division - I),
Villupuram.

... Appellant/ 1st Respondent

vs.

1.Thiruvengadam

2.Janakiraman

3.Abirami

... Respondents 1to 3/ Claimants

4.Josephraj

5.The Divisional Manager,
National Insurance Company Limited,
No.1, Officers Line,
Vellore - 1,
Vellore District.

... Respondents 4 and 5/
Respondents 2 and 3

Civil Miscellaneous Appeal filed under Section 173 of the
Motor Vehicles Act 59 of 1988 against the judgment and decree
dated 20.03.2014 made in M.C.O.P.No.44 of 2012 on the file of
the Motor Accident Claims Tribunal, (Principal Sub Court),
Thiruvannamalai.

For appellant

: Mr.S.Sairaman

ORDER

This Appeal is directed against the impugned judgment and
decree passed by the Motor Accident Claims Tribunal/Principal
Subordinate Court, Thiruvannamalai in M.C.O.P.No.44 of 2012
dated 20.03.2014 awarding a compensation of Rs.5,90,000/- to the
legal heirs of the deceased.

2. The learned counsel for the appellant would submit that the Tribunal has failed to consider the fact that the driver of the appellant transport corporation was driving the bus very cautiously at the time of the accident and therefore, he ought not to have been held responsible for the death of the deceased. The finding given by the Tribunal in respect of negligence aspect is contrary to the evidence available on record. The claim made by the claimant with regard to the age of the deceased as 37 years was taken into account merely relying on the post-mortem report. Consequently, the multiplier in calculating the compensation was also wrongly applied. Therefore, from looking at any angle, the impugned judgment and decree passed by the Tribunal cannot be sustained. The learned counsel would further submit that when the age of the deceased was disputed, the Tribunal ought not to have admitted the claim of the claimant with regard to the age of the deceased as 37 years. Even with regard to the monthly income of the deceased, without there being any evidence whatsoever has fixed Rs.4,500/- as the notional monthly income and after giving a deduction towards personal expenses to the tune of Rs.1,500/- as $\frac{1}{3}$ rd of Rs.4,500/-, the monthly notional income of the deceased was arrived at Rs.3,000/-. Based on this, a sum of Rs.5,40,000/- (Rs.3,000 X 12 X 15) has been arrived. For the loss of love and affection, loss of consortium, mental sufferings a sum of Rs.20,000 has been awarded in favour of the first claimant/first respondent. In awarding the compensation amount towards the loss of love and affection and consortium, the Tribunal has not followed the earlier decisions of this Court. In toto, the Tribunal has awarded a sum of Rs.5,90,000/- as compensation. As the driver of the transport corporation was not negligent in driving the bus of the Transport Corporation, fixing the liability against the Transport Corporation is not justified. In view of the above reasons, the impugned order is required to be interfered with, he pleaded.

3. Heard the learned counsel appearing for the appellant.

4. This Court is unable to find any justification to entertain the Appeal. At the time of the accident that took place on 19.11.2007 at about 16.00 hours, when the first respondent and his wife Saraswathi/deceased were coming in a bicycle near opposite to Ramakrishna Hotel at Thiruvannamalai, the second respondent, namely, Josephraj, drove his two wheeler bearing Regn.No.TN32B/4381 in a rash and negligent manner and hit the bicycle. As a result, the pillion rider - Saraswathi fell down on the ground in a mud path and at that time, the driver of the first respondent Transport Corporation was driving the Bus Regn.No.TN3-2N-2457 in a rash and negligent manner behind the petitioner and hit the first claimant's/first respondent's wife Saraswathi. Immediately, she was taken to Government Hospital, Thiruvannamalai for treatment. She was found dead. Subsequently, an F.I.R. was also registered in Crime No.487/2007 under Sections 279, 337, 304(A) IPC on the

file of the Tiruvannamalai Town Police Station and the matter is pending before the Judicial Magistrate Court No.1, Thiruvannamalai. The claim petition was filed by the husband, son and daughter of the deceased. Counter Affidavit was also filed by the Transport Corporation stating that the amount claimed by the claimants for consortium and loss of love and affection cannot exceed Rs.5,000/- and Rs.10,000/- respectively as per the decision rendered by this Court vide Judgment dated 19.10.204 in C.M.A.No.3043 of 2004. Though the claimants stated that the monthly income of the deceased is Rs.5,000/-, disbelieving the said statement, the Tribunal considering the fact that at the relevant point of time the deceased was working as Ancillary Assistant, fixed Rs.4,500/- as notional monthly income and after deducting 1/3rd towards personal expenses, fixed the monthly income as Rs.3,000/-. Based on this, a sum of Rs.5,40,000/- (Rs.3,000 X 12 X 15) has been arrived at. Apart from this, a sum of Rs.10,000/- has been awarded towards funeral expenses. For the loss of love and affection, loss of consortium, mental sufferings a sum of Rs.20,000 has been awarded in favour of the first claimant/first respondent. The claimants/respondents 2 and 3 have been awarded a sum of Rs.10,000/- each towards loss of love and affection. In toto, a sum of Rs.5,90,000/- has been awarded as compensation. When the first respondent/claimant has lost his wife, aged about 37 years, the Tribunal has rightly followed the ratio laid down in Smt.Sarla Verma and others Vs. Delhi Transport Corporation and another reported in 2009-5-L.W.561.

5. Therefore, for the reasons stated above, this Court does not find any infirmity or illegality in the impugned judgment and decree of the Tribunal. The Civil Miscellaneous Appeal fails and the same is dismissed. No costs. The connected Miscellaneous Petition is closed.

6. The learned counsel appearing for the appellant/Transport Corporation sought for eight weeks' time to deposit the entire award amount. Considering the facts and circumstances of the case, this Court grants six weeks' time from the date of receipt of a copy of this order to deposit the entire award amount, failing which, the award amount will carry interest at the rate of 9% per annum.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

asvm

To

The Principal Sub Judge
(Motor Accident Claims Tribunal)
Thiruvannamalai.

2 ccs to Mr.S. Sairaman, Advocate, Sr. 62054

C.M.A.No.2553 of 2015
and
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GR (CO)
kk 28/1



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