

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.03.2015

CORAM

THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN

C.M.A. No. 470 of 2015

&

M.P. No. 1 of 2015

The Managing Director,
Tamilnadu State Transport Corporation
Ltd.,
Kovaikottam, Mettupalayam Road,
Coimbatore.

...Appellant/
2nd respondent

Vs.

1. Amuthawalli
2. M. Navamani
3. Nachammal
4. Ragavan

...Respondents 1 to 3 / Petitioners

(R4 is Driver, Unnecessary Party
Hence, given up)

...4th Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under section 173 of the Motor Vehicles Act, 1988, as against the judgment and decree dated 08.02.2013 passed in M.C.O.P. No. 660 of 2009 by the Motor Accidents Claims Tribunal (Principal District Court), Erode.

For Appellant :: Mrs.R.T. Sundari

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred by the Transport Corporation questioning the liability as well as the quantum of award passed by the Tribunal, to the tune of Rs. 4,64,500/-, for the death of one N. Murugesan, husband of the 1st respondent, father of the 2nd respondent and son of the 3rd respondent,

who was aged about 52 years and working as an Accountant in a Timber Depot, by name, "Amman Trading Company" said to have been earning about Rs.10,000/- per month, in the accident, which occurred on 01.04.2009.

2. Heard Mrs.R.T. Sundari, learned counsel for the appellant.

3. Though it is argued by the learned counsel for the appellant that the deceased, who was standing on the right side of the road, invited the accident by suddenly crossing the road, when the bus was coming on the road, the Tribunal, based on the evidence of P.W.2, an eye-witness to the occurrence, categorically came to the conclusion that the accident occurred because of the rash and negligent driving by the driver of the bus. Moreover, R.W.1, who was examined by the appellant Transport Corporation is the conductor of the bus and no steps were taken to examine the driver of the bus, who alone is competent to speak about the accident. Based on the evidence of the eye-witness, P.W.2, the Tribunal came to the conclusion that when the deceased was standing near the Timber Depot, he was hit by the bus belonging to the appellant Transport Corporation, driven rashly and negligently. Moreover, Ex-P1, FIR was registered against the driver of the bus. The finding rendered by the Tribunal, regarding negligence aspect, is based on evidence and the same cannot be set aside. Therefore, the appellant Transport Corporation has been rightly held liable by the Tribunal to pay the compensation.

4. As far as quantum is concerned, the learned counsel for the appellant submitted that a sum of Rs.4000/- was taken as the monthly income of the deceased, in the absence of any positive evidence regarding his income. In the year 2009, it would not have been possible to get manual labour for less than Rs.6000/-. Therefore, this Court re-determines the monthly income of the deceased as Rs.6000/- per month, which is in consonance with the judgment of the Honourable Apex Court rendered in Syed Sadiq etc. Vs. Divisional Manager, United India Insurance Company Limited reported in 2014 (1) TN MAC 459 (SC), wherein, in the absence of any proof regarding income, in respect of the vegetable vendor, who sustained injuries in the accident which took place in the year 2008, the Honourable Apex Court, fixed his monthly income at Rs.6500/- and added 50% towards "Future Prospects". However, as far as the present case is hand, since the deceased was aged about 52 years, "Future Prospects" is not taken into consideration and the monthly income, alone, is re-determined at Rs.6000/-.

5. As per the judgment of the Honourable Apex Court in Sarla Verma and others Vs. Delhi Transport Corporation and another reported in 2009 (2) TN MAC 1, one-third deduction has to be made towards "Personal Expenses" and the multiplier to be adopted, as per the age of the deceased is 11. Therefore, applying the same, "Loss of Income" is calculated as follows:

Loss of Income :: (Rs.6000/- (-) 1/3 (Rs.6000/-)) x 12 x 11
:: Rs.4000 x 12 x 11
:: Rs.5,28,000/-.

The sum of Rs.50,000/- awarded towards "Loss of Consortium" is too low and the same is enhanced to Rs.1 lakh, following the judgment of the Honourable Apex Court in Rajesh and others V. Rajbir Singh and others reported in 2013 (2) TN MAC 55 (SC). The sum of Rs.50,000/- awarded towards "Loss of love and affection" to the daughter and mother of the deceased is reasonable and the same is confirmed. However, Rs.5000/- awarded each towards "Transportation Expenses" and "Funeral Expenses" is too low and the same is enhanced to Rs.25,000/- and Rs.10,000/- respectively. The sum of Rs.2500/- awarded towards "Loss of Estate" is confirmed. In all, a sum of Rs.7,15,500/- is awarded as compensation. The rate of interest awarded by the Tribunal @ 7.5% per annum remains intact.

6. Though the appeal has been filed by the Transport Corporation against the award of the Tribunal, this Court, suo motu, has enhanced the compensation to the tune of Rs.7,15,500/-, invoking Order XLI Rule 33 CPC by re-appreciating the evidence on record and applying the correct law, as on date, to the facts of the case, with a view to award just compensation to the family, who lost their breadwinner. What is to be awarded is just and reasonable compensation and therefore, this Court, even in the absence of appeal/cross-appeal by the claimants and even in the absence of the claimants, has enhanced the compensation, at the admission stage itself.

7. The appellant Transport Corporation is directed to deposit the entire amount, as per the modified award passed by this Court, with interest and costs, after deducting the amount, if any, already deposited, before the Tribunal, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the claimants are permitted to withdraw their respective shares, as per the ratio fixed by the Tribunal, within a period of one week thereafter. The claimants shall pay additional court-fee for the enhanced amount before the Tribunal.

8. In the result, the Civil Miscellaneous Appeal is dismissed and the award passed by the Tribunal is enhanced to Rs.7,15,500/- together with interest @ 7.5 per annum. No costs. Connected M.P. is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

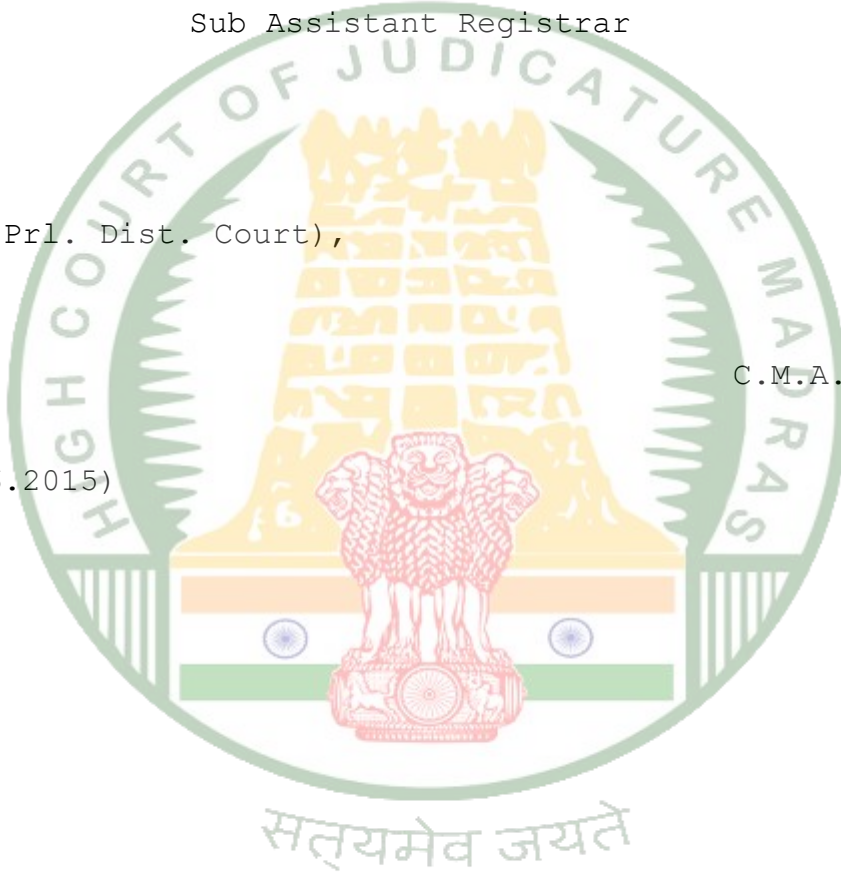
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To

The MACT (Prl. Dist. Court),
Erode.

C.M.A. No. 470 of 2015

RSI (CO)
PSI (08.06.2015)



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