



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.07.2015

CORAM:

THE HONOURABLE MS.JUSTICE V.M. VELUMANI

C.M.A.(MD) No. 1017 of 2014 and
M.P.(MD).No.1 of 2014

The Managing Director,
Tamil Nadu State Transport Corporation,
Karaikudi. ... Appellant / Respondent

Vs.

1. Saroja
2. Palanimanickam
3. Renuka Devi
4. Radhaika Devi
5. Minor Ramadevi

(rep. By 1st respondent) .. Respondents / Petitioner

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988 against the Judgment and Decree made in MCOP.No.100 of 2012 dated 21.02.2014, on the file of Motor Accidents Claims Tribunal, Principal District Court, Pudukkottai.

For Appellant : Mr. P. Prabhakaran

For Respondents : Mr. N. Kamesh

J U D G M E N T

The Civil Miscellaneous Appeal is filed against the Judgment and Decree, made in MCOP.No.100 of 2012, dated 21.02.2014, on the file of Motor Accidents Claims Tribunal, Principal District Court, Pudukkottai.

2. The appellant is the Transport Corporation and the respondents are the claimants, before the Tribunal.

3. The facts of the case are as follows:-

(i) On 20.01.2011, Thanikodi, the husband of the first respondent, father of the respondents 2 to 5, was standing in the edge of the road, at Punalkulam bus stop, to go to Manganoor. At that time, the Bus bearing Registration Number. TN 63 N 1145, coming from Thanjavur towards Pudukkottai, belonging to the appellant, driven by the Driver in a rash and negligent manner, hit against the said Thanikodi. He sustained injuries and died on the spot. At the time of accident, he was aged about 50 years and he was owner of 12 acres of land. By doing agricultural work as well as rearing goats he was earning a sum of Rs.60,000/- per month. The respondents 1 to 5 are the legal heirs of the deceased and they claimed a sum of Rs.12,00,000/- on various heads, for the death of the deceased Thanikodi.



(ii) The appellant filed counter and stating that the accident did not take place as alleged by the respondents. On the other hand, nobody was getting in to the Bus or getting out of the Bus. Therefore, the Driver of the Bus was moving the bus. The deceased suddenly crossed the road and dashed on the left hand side of the Bus and fell down. The Driver of the Bus was not responsible for accident and therefore, prayed for dismissal of the claim petition.

(iii) Before the Tribunal, the first respondent was examined herself as PW.1 and one Sekar, who is the eyewitness was examined as PW.2 and marked 6 documents as Exs.P1 to P6. The appellant examined the Driver of the Bus as RW.1 and did not mark any documents. The Tribunal considering the evidence of PW.2 and Ex.P1- First Information Report, Ex.P3.- Motor Vehicle Inspectors Report,, Ex.P4-Copy of the Charge Sheet, came to the conclusion that the accident took place only due to rash and negligent driving of the Driver of the Bus, belonging to the appellant. Based on pleadings and evidence, the Tribunal awarded a sum of Rs.7,09,000/- together with interest at 7.5% per annum, as compensation to the respondents. Against the said order, the present appeal is filed by the appellant.

4. The learned counsel for the appellant contended that :-

(I) the conclusion of the Tribunal that the accident took place entirely due to rash and negligent driving of the driver of the Bus is contrary to the facts;

(ii) the Tribunal failed to consider the case of the appellant that the deceased suddenly crossed the road and he dashed himself against the left hand side of the Bus and invited accident by his negligence;

(iii) the Tribunal has fixed the monthly income of the deceased as Rs.5,000/- without any basis;

(iv) the Tribunal should have deducted 1/3rd from the income of the deceased towards his personal expenses; and

(v) the amounts awarded by the Tribunal is excessive and therefore, prayed for setting aside the order of Tribunal and allow the appeal.

5. Per contra, the learned counsel for the respondents contended that there is no reason to interfere with the order of the Tribunal. He further contended that the compensation awarded by the Tribunal for loss of love and affection is too meagre and prayed for enhancement of compensation.

6. Heard the learned counsel appearing for the parties.

7. The points for consideration in this appeal are as follows:-

(i) Whether the accident took place due to rash and negligent driving of the Driver of the appellant or the accident occurred due to negligence of the deceased?

(ii) Whether the compensation awarded is excessive or meagre?

Point No. I

<https://hcservices.ecourts.gov.in/hcservices/>

From the records, it is seen that PW.2 - Sekar, eyewitness to the accident has stated that the accident took place only due to rash and



negligent driving by the Driver of the bus. The respondent also let in evidence to that effect.

8. The respondents filed First Information Report, Motor Vehicles Inspector Report with a copy of the charge sheet, proved that the accident took place only due to rash and negligent driving of the Driver of the Bus belonging to the appellant. RW.1, Driver of the Bus also admitted that, the Department Proceedings had been initiated against him. In view of this, I am inclined to hold that the finding of the Tribunal that the accident took place only due to rash and negligent driving of the Driver of the Bus belonging to the appellant, is correct. Point No.1 is answered accordingly.

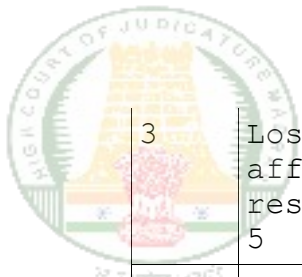
Point No. 2

The respondents contended that the deceased was earning a sum of Rs.7,000/- per month by doing agricultural work and rearing goats. For that, they have not produced any material to substantiate the claim. In the circumstances, the Tribunal fixed the notional income of the deceased at Rs.5,000/- per month, on the ground that as an agricultural Coolie, he would have earned a sum of Rs.200/- per day and he would have got work for 25 days in a month. There is no error in this reasoning. The Tribunal deducted 1/5th from the total income towards personal expenses.

9. In the present case, taking into consideration the age of respondents 1 to 4, deceased would have contributed 3/4th of his total income only towards maintenance of family. Therefore, the order of the Tribunal is modified by ordering deduction of 1/4th from total income.

10. The contention of the learned counsel for the appellant that the Tribunal should have deducted 1/3rd towards personal expenses, is untenable. The Tribunal has fixed the age of the deceased as 50, based on the Post Mortem report and death certificate. The Tribunal applied multiplier 13, as per the guidelines of Apex Court reported in 2009(2) TNAMAC 1 (SC) (Smt. Sarlaverma Vs. Delhi Transport Corporation and another). The order of the Tribunal with regard to the compensation for loss of dependency is modified as Rs.45,000 x 13 = Rs.5,85,000/-. The amount awarded by the Tribunal towards loss of consortium to first respondent is very meagre, hence, a sum of Rs.25,000/- awarded by the Tribunal is hereby enhanced to Rs.50,000/-. A sum of Rs.50,000/- awarded by the Tribunal towards loss of love and affection is hereby enhanced to Rs.1,00,000/- to the respondents 2 to 5. In all other aspects, the amount awarded by the Tribunal is hereby confirmed. Therefore, the award of the Tribunal is enhanced from Rs.7,09,000/- to Rs.7,45,000/- in the following manner:-

S.No	Description	Amount awarded by Tribunal	Amount awarded by this Court	Award confirmed or enhanced or granted
1	Loss of dependency	6,24,000.00	5,85,000.00	Reduced by Rs.39,000/-
2	Loss of consortium to the first petitioner	25,000.00	50,000.00	Enhanced by 25,000/-



3	Loss of love and affection to the respondents 2 to 5	50,000.00	1,00,000.00	Enhanced by Rs.50,000/-
4	Funeral expenses	10,000.00	10,000.00	Confirmed
	Total	7,09,000.00	7,45,000.00	Enhanced by Rs.36,000/-

The award of interest at the rate of 7.5% per annum remains unaltered.

11. The appellant / Transport Corporation is directed to deposit the said sum of Rs.7,45,000/- together with interest, to the credit of MCOP.No.100 of 2012, on the file of Motor Accidents Claims Tribunal, Principal District Court, Pudukkottai, after deducting the amount already deposited if any, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the respondents 1 to 5 are entitled to their share as per the apportionment fixed by the Tribunal. The respondents 1 to 4 are permitted to withdraw their share together with interest, on filing proper application before the Tribunal. The share of the 5th respondent / minor shall be deposited in any one of the Nationalized Banks till she attains majority.

12. With the above direction, the Civil Miscellaneous Appeal is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

The Assistant Registrar(writs)

/True copy/

Sub-Assistant Registrar

To

The Motor Accidents Claims Tribunal, Principal District Judge,
Pudukkottai.

Copy to: The Section Officer,
VR Section,
Madurai Bench of Madras High Court, Madurai

+1cc to Mr.P.Prabhakaran, Advocate SR.No.35285

+1cc to Mr.R.Devaraj, Advocate SR.No.35295

trp

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