

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED: 03.12.2015****CORAM:****THE HONOURABLE MR.JUSTICE T.MATHIVANAN****C.M.A (MD) No.1258 of 2015**
and M.P(MD)No.2 of 2015

The Managing Director,
Tamil Nadu State Transport Corporation
(Division II) Limited,
Vannarpettai,
Tirunelveli - 3.

.. Appellant/Respondent

-Vs-

1.Sampath
2.Vasanthi

.. Respondents/Petitioners

Prayer:- Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 23.12.2014 and made in M.C.O.P.No.36 of 2014 on the file of the Motor Accident Claims Tribunal (Sub Court), Sankarankovil.

For Appellant : Mr.P.Prabhakaran
For Respondents : Mr.J.C.Rathinavel Pandian

JUDGMENT

The Tamil Nadu State Transport Corporation Limited has filed this Civil Miscellaneous Appeal under Section 173 of the Motor vehicles Act, 1988 as against the award, dated 23.12.2014 and made in the claim petition in M.C.O.P.No.36 of 2014 on the file of the Motor Accident Claims Tribunal (Sub Court), Sankarankovil.

2. The quantum of compensation as well as negligence have been questioned in this appeal.

3. Claiming a sum of Rs.25,00,000/-, the respondents 1 and 2 herein have filed a claim petition in M.C.O.P.No.36 of 2014 for the death of their son in a road traffic accident said to have been taken place on 18.09.2012 at about 05.00 p.m., at Sankarankovil to Rajapalayam main road involving the appellant-Transport Corporation's bus bearing Registration No.TN-72-N-1247. The appellant/Transport Corporation has contested the claim petition and based on the evidence available on record, the Tribunal has proceeded to award totally a sum of Rs.9,15,000/- with 7.5% interest and cost. Questioning the quantum as well as negligence, the appellant/Transport Corporation stands before this Court with this Civil Miscellaneous Appeal.



4. Mr.P.Prabhakaran, learned counsel appearing for the appellant/Transport Corporation has firstly argued that the deceased had ridden the TVS suzuki motor cycle bearing Registration No.TN-04-H-1840 with a pillion rider in a rash and negligent manner and allowed his vehicle to hit against the bus belonging to the appellant/Transport Corporation and thereby invited the accident. But, without considering this aspect, the Tribunal had deliberately gone to the extent of fixing the negligence on the part of the driver of the appellant's Corporation bus.

5. Secondly, the notional monthly income of the deceased has been fixed by the Tribunal at Rs.5,000/- and in addition to that, 50% of additional income towards future prospects has also been determined, and in total, the Tribunal has fixed Rs.7,500/- as monthly income of the deceased. This has been vehemently opposed by Mr.P.Prabhakaran, learned counsel appearing for the appellant/Transport Corporation bus and apart from this, the award of total loss of income of the family, calculated by the Tribunal at Rs.8,10,000/- and another amount of Rs.75,000/- towards loss of love and affection have been strongly opposed as disproportionate and he has also urged that a reasonable award might be passed in favour of the claimants, after reducing the compensation.

6. But, on the other hand, Mr.J.C.Rathinavel Pandian, learned counsel appearing for the respondents/claimants has submitted that since the Tribunal had proceeded to award a sum of Rs.9,15,000/- as against the claim of Rs.25,00,000/-, he has urged for enhancement of compensation.

7. It is important to note here that no appeal or cross-objection has been filed on behalf of the claimants challenging the award or claiming enhancement of compensation and therefore, the argument advanced by Mr.J.C.Rathinavel Pandian, learned counsel appearing for the respondents/claimants is not sustainable as well as discernible.

8. With regard to the negligence, the Tribunal has found that P.W.2 had given a vivid account about the accident and from his evidence, it was revealed that the driver of the bus alone had driven the bus in a rash and negligent manner and hit against the two-wheeler, in which the deceased was riding from the opposite direction. The Tribunal has also found that the averments of the First Information Report under Ex.P.1 were in fair congruence with the evidence of P.W.2, who happened to be an eye witness to the occurrence.

9. It is significant to note here that the appellant/Transport Corporation has not evinced any interest in examining witnesses or adducing documentary proof to disprove the claim of the claimants. Therefore, the contention with regard to negligence on the part of the deceased was rightly rejected by the Tribunal and the finding of the Tribunal in this connection, according to this Court, is absolutely right and it does not require any disturbance. Insofar as the quantum is concerned, the Tribunal has totally awarded a sum of Rs.9,15,000/- under the following heads:-

Sl.No.	Heads of the award	Amount awarded
1.	Loss of dependency	Rs.8,10,000/-
2.	Loss of love and affection	Rs. 75,000/-
3.	Funeral expenses	Rs. 25,000/-
4.	Loss of estate	Rs. 5,000/-
	Total	Rs.9,15,000/-

10. It is obvious to note here that the deceased was aged about 21 years at the relevant point of time. It is also the case of the claimants that the deceased was a goldsmith by occupation and thereby earned a sum of Rs.15,000/- per mensem. Ex.P.6 is the salary certificate and Ex.P.7 is the certificate given by the goldsmith's association at Sankarankovil Town. In Ex.P.6, it is stated that the deceased was getting a sum of Rs.15,000/-. But, this has not been taken into account by the Tribunal saying that it was given by an association and not an individual. Therefore, the notional monthly income of the deceased was determined at Rs.5,000/- by the Tribunal. Since the deceased had died at the age of 21 years, towards future prospects, 50% of his monthly income was also added. Accordingly it comes to Rs.7,500/- (Rs.5,000/- + Rs.2,500/-). The annual dependency of the family would be calculated at Rs.90,000/-. The Tribunal, following the Judgment of the Apex Court in **Sarla Verma and Others Vs. Delhi Transport Corporation and another** reported in **(2009) 4 MLJ 997 (SC)**, has given 1/2 deduction, as the deceased was a bachelor. After giving this deduction, the remaining 1/2 would be Rs.45,000/-. Since the deceased was aged about 21 years at the relevant point of time, the Tribunal has selected the multiplier of '18'. Accordingly, the life dependency of the family was calculated at Rs.8,10,000/-. This Court finds that this amount of Rs.8,10,000/- towards loss of dependency of the family could be allowed to remain intact. Insofar as the compensation of Rs.75,000/- towards loss of love and affection is concerned, this Court finds that it seems to be exorbitant and fanciful and therefore, the said amount could be reduced to Rs.35,000/-. Insofar as the compensation awarded by the Tribunal under the heads of funeral expenses and loss of estate are concerned, it may be allowed to remain in tact without any modification.

11. Considering the above aspect, this Court has reduced a sum of Rs.40,000/- from the award of Rs.75,000/- towards loss of love and affection. In other aspects, the award of the Tribunal can be maintained.

12. This Court, on assessing the nature of claim and the related circumstances, has modified the award amount as follows:-

Sl.No.	Heads of the award	Amount awarded
1.	Loss of dependency	Rs.8,10,000/-
2.	Loss of love and affection	Rs. 35,000/-
3.	Funeral expenses	Rs. 25,000/-
4.	Loss of estate	Rs. 5,000/-
	Total	Rs.8,75,000/-

Therefore, the award of the Tribunal has been reduced to Rs.8,75,000/- from Rs.9,15,000/-.

13. Accordingly, the Civil Miscellaneous Appeal is partly allowed. The appellant-Transport Corporation is directed to deposit a sum of Rs.8,75,000/- with interest at the rate of 7.5% per annum together with cost, if not already deposited, from the date of claim petition till date of realisation within a period of six weeks from the date of receipt of the copy of this order. On making such deposit, the claimants are at liberty to withdraw their respective shares, as directed by the Tribunal, with proportionate interest and costs without filing any formal petition. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-

Assistant Registrar(CS-II)

/True copy/

Sub Assistant Registrar

ps

To

The Motor Accident Claims Tribunal,
(Sub Court), Sankarankovil.

Copy to:

The Section Officer, V.R.Section,
Madurai Bench of Madras High Court, Madurai.

+one cc to Mr.J.C.Rathinavel Pandian, Advocate in SR.No.69283

+one cc to M/s.P.Prabhakaran, Advocate in SR.No.69244

ps

CSL/GSV-AN/09.02.2016/4p/5c

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