

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 14.09.2016

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THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A. No.2005 of 2016
& C.M.P.No.14525 of 2016

The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Division-1, 3/137, Salamedu,
Vazhuthareddy Post,
Villupuram 605 602.

.. Appellant

Versus

1.K.Kasi
2.K.Dhanalakshmi
3.K.Chithra
4.Pachiyyappan
5.The Divisional Manager,
National Insurance Company,
Puducherry.

.. Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 30.04.2014 made in M.C.O.P.No.449/2010 on the file of the Motor Accidents Claims Tribunal, (I Additional District Judge), Cuddalore.

For Appellant : Mr.P.Paramasiva Doss

J U D G M E N T

The Managing Director of Tamil Nadu State Transport Corporation Ltd.
has filed the present Civil Miscellaneous Appeal, challenging the correctness of

the impugned award dated 30.04.2014 made in M.C.O.P.No.449/2010 on the file of the Motor Accidents Claims Tribunal, (I Additional District Judge), Cuddalore.

2.Learned counsel appearing for the appellant/Transport Corporation would submit that the learned Tribunal has wrongly fixed Rs.6,000/- as notional monthly income in the absence of any definite proof with regard to the monthly income of the deceased, who was serving as a driver and without even verifying and cross checking with any other document and therefore the approach adopted by the Tribunal is totally unacceptable. He would further submit that the deduction made at the rate of 1/3rd for personal expenses in a case of bachelor is against the judgment of the Hon'ble Apex Court in the case of Sarla Verma.

3.This Court is not able to find any merit on his contention for three reasons. Firstly, on 24.10.2008 at about 20.30 hours, when the deceased was proceeding in the Tata ACE Vehicle bearing Registration No.TN-31-AA-6149 from Chidambaram to Cuddalore direction, a bus bearing registration No.TN-32-N-2631, belonging to the appellant Transport Corporation, dashed against the said vehicle of the deceased. As a result, the said vehicle has been capsized on the road. Resultantly, the deceased sustained fatal injuries and died on the spot.

The Post Mortem was done in the Government Headquarters Hospital, Cuddalore and the Post Mortem Certificate, marked as Ex.P2, clearly shows that the deceased had suffered fatal injuries, caused in the accident for which the learned Tribunal, after considering the copy of the First Information Report marked as Ex.P.1, supported by the evidence of P.W.1, has come to the conclusion that the deceased died due to head injury caused in the accident. Secondly, while fixing the loss of income, the learned Tribunal, again accepting the evidence of P.W.1 that the deceased was serving as a driver and earning a sum of Rs.6,000/- per month and finding no contra evidence from the Transport Corporation, has rightly accepted Rs.6,000/- as monthly income of the deceased. Learned Tribunal, keeping in mind that the deceased was described as only bread winner of the family and that the claimants' family had lost the bread winner, accepting Rs.6,000/- as notional monthly income of the deceased and after making deduction $\frac{1}{3}$ rd towards personal expenses of the deceased, has arrived at a total compensation of Rs.9,72,000/- by adopting the multiplier '18'. On that score, the negligence was established against the driver of the offending vehicle, belonging to the Transport Corporation. Thirdly, as the deceased died at the age of 21 years, after fixing Rs.6,000/- as notional monthly income, it has rightly made $\frac{1}{3}$ rd deduction and has arrived at a sum of Rs.9,72,000/- as total compensation payable to the claimants' family. While doing so, the learned Tribunal has committed a major mistake by not awarding

any sum towards future prospects in the case of the deceased, as per ratio laid down in the case of Sarla Verma. When the deceased died at the age of 21 years, after fixing notional income of Rs.6,000/-, it is not known why 50% of the total income has not been made towards future prospects. This Court finds infirmity in the award passed by the Tribunal. If the same is challenged by the claimants for enhancement, this Court would have decided the matter by modifying the award.

4. But, this Court is not in a position to entertain the present appeal. Accordingly, the Civil Miscellaneous Appeal fails and the same is dismissed. No costs. Consequently, Connected miscellaneous petition is closed.

5. Since the learned counsel for the appellant submitted that the appellant had deposited a sum of Rs.25,000/- towards statutory deposit, the balance amount is directed to be deposited within a period of four weeks from the date of receipt of a copy of this order. On such deposit, it is for the claimants to move a petition before the Tribunal for withdrawing the said amount.

14.09.2016

Index : Yes / No
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To

1. The Motor Accidents Claims Tribunal,
(I Additional District Judge), Cuddalore

2. The Section Officer,
V.R. Section,
High Court, Madras.

T.RAJA, J.

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