

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 9/9/2016

C O R A M

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

Civil Miscellaneous Appeal No.2020 of 2016

The Managing Director
Tamil Nadu State Transport
Corporation Limited
Thiruvannamalai. ...Appellant/Respondent

Vs

1. Mumthaj
2. Minor Shagith
3. Minor Vagith
4. Subeethabee
5. Maboob John @ Sunnabai
(Minors rep. by Next
friend Mother Mumthaj) ...Respondents/Claimants

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree passed by the Motor Accident Claims Tribunal (Special District Court), Krishnagiri in M.C.O.P.No.886 of 2013 dated 23/12/2014.

For appellant : Mr.P.Paramasivadoss

J U D G M E N T

(Judgment of the Court was made by S.Manikumar,J)

Aggrieved by the quantum of compensation, the Tamil Nadu State Transport Corporation Limited, Tiruvannamalai, has preferred the instant appeal.

2. With the consent of the learned counsel for the appellant/State Transport Corporation Limited, Tiruvannamalai, appeal is heard and disposed of, at the admission stage itself.

3. The short facts leading to the appeal are that on 9/10/2012, about 10.30 hours, when the deceased/Shahjahan was riding a Bajaj Boxer motorcycle, a Tamil Nadu State Transport Corporation bus, bearing Registration No.TN25N-0034, driven by its driver in a rash and negligent manner, dashed behind the motor cycle and caused the accident. He was thrown off from the motor cycle and sustained fatal injuries on his head and other parts of the body. Immediately, the injured was taken to the Government Hospital, Mathur and then referred to Om Sakthi Hospital, Dharmapuri. Thereafter, he was taken to Srinivasa Hospital, Bangalore, for further treatment till 25/10/2012. As there was no improvement, they had planned to go to General Hospital, Chennai, on 29/10/2012. In spite of the best medical treatment, he died on 28/10/2012.

4. A case has been registered, against the driver of the bus, in Crime No.259/12 under Sections 279, 337 and then altered to Section 279 and 304 (A) of the Indian Penal Code, on the file of the Mathur Police Station, Krishnagiri District.

5. Wife, Children and parents of the deceased, filed M.C.O.P.No.886 of 2013, on the file of the Motor Accident Claims Tribunal (Special District Court for Motor Accident Claims Cases), Krishnagiri, claiming that at the time of accident, the deceased Shajahan was aged 35 years. He was working in M.R.K.Granite Factory and earned Rs.15,000/- p.m.

6. Tamil Nadu State Transport Corporation (Salem) Limited, Tiruvannamalai/appellant herein disputed the manner of accident and negligence attributed against the driver of the bus. Without prejudice to the same, the transport Corporation disputed the age, avocation, income and the quantum of compensation, claimed under various heads.

7. Before the Tribunal, wife of the deceased examined herself as P.W.1 and narrated the events, resulting in the claim. P.W.2 is the eye witness. Ex.P.1 photostat copy of First Information Report; Ex.P.2 is the photostat copy of the alteration of F.I.R Report under Section 304 A of IPC; Ex.P.3 is the photostat copy of the Post Mortem Certificate; Ex.P.4 Medical and Hospital bills for Rs.2,55,349/-; Ex.P.5 is the photostat copy of the death certificate of the deceased and Ex.P.6 is the photostat copy of the family card.

8. On the side of the appellant/Transport Corporation, Driver of the bus has been examined.

9. Based on the oral and documentary evidence, the Tribunal held that the driver of the Corporation bus, bearing Registration No.TN25N-0034, was negligent in causing the accident.

10. On the quantum of compensation, though P.W.1 claimed that at the time of accident, her husband Shajahan was working in M.K.R.Granite factory and earned Rs.15,000/- p.m., no document has been marked. In the absence of any documentary proof, having regard to the number of dependents, the Tribunal, fixed the monthly income as Rs.9,000/- (Rs.300/- per day).

11. Taking note of the entry made in Ex.P.3 Post Mortem Certificate, the Tribunal fixed the age of the deceased as 36. Following the decision of Sarla Verma (Smt) and Others Vs. Delhi Transport Corporation and Another {(2009) 6 Supreme Court Cases 121}, the Tribunal applied 15 multiplier, and considering the fact that the number of dependents are five in number, the Tribunal deducted 1/5th towards the personal and living expenses of the deceased. Out of Rs.9,000/-, Rs.1,800/- has been deducted towards personal expenses and the Tribunal, determined the annual contribution of the deceased to his family as Rs.86,400/- (Rs.7,200/- x 12 = Rs.86,400/- and accordingly, computed the loss of contribution to the family as Rs.12,96,000/- (86,400 x 15).

12. As the first claimant/respondent had lost her husband, at the young age of 30 years, the Tribunal awarded Rs.1 lakh towards consortium. As the children were aged about 11 and 8 years respectively, the Tribunal awarded Rs.2 lakhs (1 lakh + 1 lakh) towards loss of love and affection. For the respondents 4 and 5/parents of the deceased, the Tribunal, awarded Rs.50,000/- (Rs.25,000 + Rs.25,000/-) under the said head.

13. Prior to the death of the deceased, family of the deceased had spent a considerable medical expenses of Rs.2,55,349/- for which the respondents/claimants have marked Ex.P.4 Medical and Hospital bills. Taking note of the same, the Tribunal awarded Rs.2,55,000/- under the head medical expenses. In addition to the above, the Tribunal has awarded Rs.20,000/- for Transportation and Rs.20,000/- for funeral expenses. Altogether, the Tribunal has awarded Rs.19,41,000/- with interest, at the rate of 7.5% p.a., from the date of filing of the claim petition, till the date of deposit of the award amount.

14. Though the Tamil Nadu State Transport Corporation, Tiruvannamalai, has filed the instant appeal, challenging negligence also, on this day, when the appeal is taken up for hearing, Mr.P.Paramasiva Doss, learned counsel for the appellant

submitted that he is restricting the challenge only to the determination of monthly income of Rs.9,000/- and the consequent computation of loss of contribution to the family. According to him, notional income of Rs.9,000/- is on the higher side and requires intervention.

15. Placing on record the above limited submission, this Court is adverting only to the said challenge.

16. The case of the respondents/claimants is that at the time of accident, Shahjahan was aged about 36 years and earned Rs.15,000/- p.m., working in M.R.K.Granite factory. But there is no documentary proof. Family of the deceased consists of wife, two children, aged about 11 and 8 years, and parents of the deceased aged about 55 and 60 years respectively. To provide food, shelter, clothing and to meet out the basic necessities and to take care of the aged parents, one may require a reasonable income.

17. Needless to state that the cost price of the essential commodities, viz., electricity, water, transportation charges are not static. Having regard to the above, this Court is of the view that Rs.9,000/- determined as the monthly income of the deceased cannot be said to be on the higher side, warranting intervention.

18. For the reasons stated supra, we are not inclined to entertain the appeal. As no other challenge is made, judgment and decree of the Tribunal, made in M.C.O.P.No.886 of 2013, dated 23/12/2014, on the file of the Motor Accident Claims Tribunal (Special District Court), Krishnagiri, is sustained.

19. In the result, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed. The Tamil Nadu State Transport Corporation Limited, Tiruvannamalai, to deposit the entire award amount with proportionate interest and costs, less the statutory deposit, to the credit of M.C.O.P.No.886 of 2013, dated 23/12/2014, on the file of the Motor Accident Claims Tribunal (Special District Court), Krishnagiri, within a period of eight weeks, from the date of receipt of a copy of this order.

20. The share of the minors, shall be deposited in any one of the Nationalised Banks in fixed deposit, under the reinvestment scheme, initially for a period of three years.

The interest accruing on the share of the minors shall be paid to the 1st respondent/mother of the minors once in three months, till they attain majority. On such deposit being made, except the minors, the respondents/claimants are permitted to withdraw the award amount, as apportioned by the tribunal, by making necessary applications.

Sd/-
Assistant Registrar(CS II)

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Sub Assistant Registrar

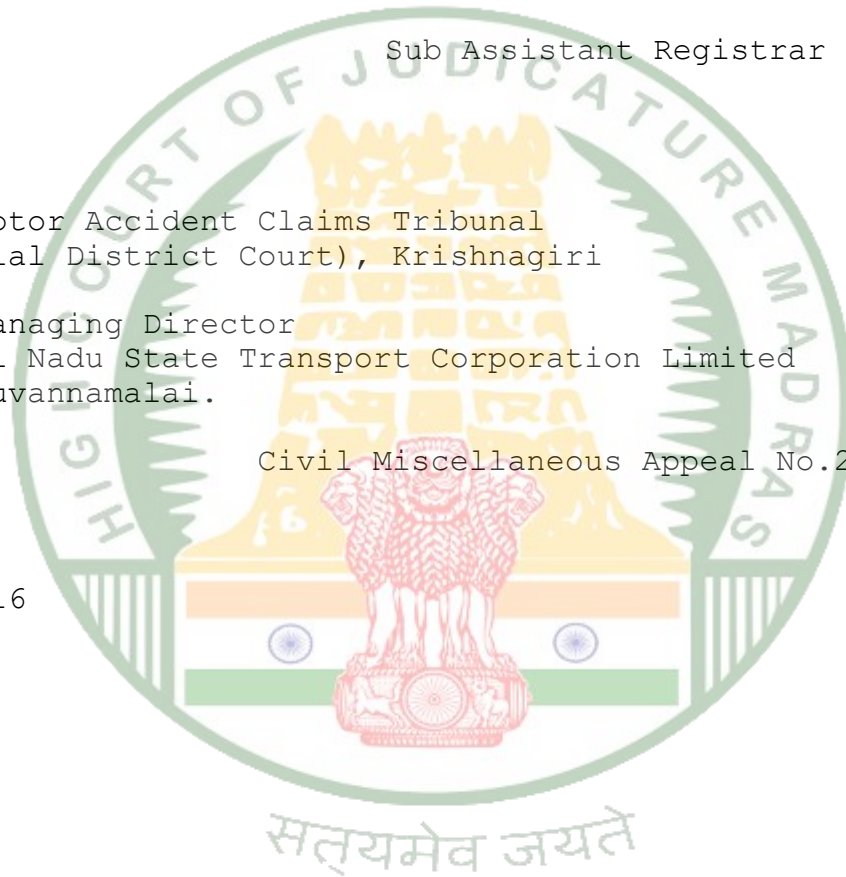
mvs.

To

1. The Motor Accident Claims Tribunal
(Special District Court), Krishnagiri
2. The Managing Director
Tamil Nadu State Transport Corporation Limited
Thiruvannamalai.

Civil Miscellaneous Appeal No.2020 of 2016

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