

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.02.2016

C O R A M

THE HONOURABLE MR.JUSTICE R.SUDHAKAR
and
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

C.M.A.No.1510 of 2014
and M.P.No.1 of 2014

The Managing Director
Tamil Nadu State Transport Corporation
Limited, Villupuram
No.3/137, Salamedu,
Vazhudareddy, Villupuram ...Appellant/Respondent

Vs

1.Saraladevi
2.Minor K.Yakavi
D/o.(Late) Kaliamurthy
3.Minor K.Balaji
S/o.(Late) Kaliamurthy
Respondents 2 and 3 rep by their mother
and natural guardian 1st respondent
herein Saraladevi

4.Chinna Ayal ... Respondents/Petitioners

Civil Miscellaneous Appeal filed under Section 173 of the
Motor Vehicles Act, 1989, against the award and Decree dated
18.10.2012 made in M.C.O.P.No.241 of 2011 on the file of Motor
Accidents Claims Tribunal, Principal District Judge, Cuddalore.

For appellant ... Mr.S.Sairaman
For respondents ... Ms.Ramya V.Rao for R1 to R4.

JUDGMENT

(Judgment of the Court was delivered by R.SUDHAKAR, J.)

The Transport Corporation is on appeal challenging the
award dated 18.10.2012 passed in M.C.O.P.No.241 of 2011 on the
file of the Motor Accidents Claims Tribunal (Principal District
Judge), Cuddalore.

2. It is a case of fatal accident. On 14.05.2010, when the
deceased-R.Kaliyamaoorthy, aged 44 years was travelling in the
appellant-Transport Corporation bus bearing Reg.No.TN-32-N-3388,

the driver of the bus drove at a very high speed in a rash and negligent manner and in the resultant accident, the deceased was thrown out of the TNSTC bus and sustained grievous injuries all over his body and head and even after continuous treatment, on 13.09.2010, he succumbed to his accidental injuries. The claimants, who are wife, two children and mother of the deceased have filed a claim petition before the Motor Accidents Claims Tribunal, Cuddalore, for compensation for a sum of Rs.50,00,000/-. According to the claimants, the deceased was working as SEL, GR Driver in TNSTC, Villupuram, and was earning a sum of Rs.25,000/- per month.

3. In support of the claim, before the Tribunal, the wife of the deceased was examined as P.W.1. Thiru.Rajmohan, said to be an eyewitness was examined as P.W.2. Dr.J.S.Chandran, was examined as P.W.3. Exs.P.1 to P.10 were marked and the details of the which are as follows:-

Ex.P.1/15.05.2010	Xerox copy of First Information Report
Ex.P.2/19.05.2010	Xerox copy of MV1 Report
Ex.P.3/30.08.2010	Xerox copy of wound certificate of deceased Kaliyamurthy.
Ex.P.4/28.08.2010	Xerox copy of discharge summary given by PIMS Hospital, Pondicherry.
Ex.P.5	Medical Bills
Ex.P.6	Advance receipt given by PIMS, Pondicherry.
Ex.P.7/20.10.2010	Certified copy of Death certificate of deceased Kaliyamurthy.
Ex.P.8/15.11.2010	Certified copy of Legal Heir Certificate of deceased Kaliyamurthy.
Ex.P.9	Salary Certificate for the month of May 2010 of deceased Kaliyamurthy
Ex.P.10/04.09.2012	Medical certificate of deceased Kaliyamurthy issued by P.W.3.

4. On the side of the Appellant Transport Corporation, the driver of the appellant transport corporation was examined as R.W.1. No document was marked.

5. The Tribunal, on an analysis of evidence and the materials placed before it, held that the accident had occurred solely due to the rash and negligent driving of the driver of the appellant Transport Corporation bus and awarded compensation, fastening liability to pay compensation on the

appellant. Aggrieved against the said award, the appeal is filed by the appellant Insurance Company.

6. It is stated that the injured was working as selection grade driver in the appellant transport corporation. He was earning a sum of Rs.25,000/- per month. As per Ex.P.9 salary certificate, the deceased was earning Rs.24,624.50 per month in which after deduction he received Rs.12,110/- as his net salary in the month of May, 2010. Considering the age of the deceased as 46 years as a selection grade bus driver, his notional income was fixed at Rs.13,000/- per month and Rs.1,56,000/- per annum. After deducting $\frac{1}{4}$ towards personal expenses of the deceased, the Tribunal fixed the loss of income to the family of the deceased at Rs.1,17,000/- per annum. Based on the age of the deceased, multiplier 13 was adopted. Accordingly, a sum of Rs.15,21,000/- was fixed as loss of income to the family of the deceased. In addition the Tribunal granted the following amounts under conventional heads as compensation with interest at 6% per annum.

Sl. No.	Head	Amount granted by the Tribunal
1	Loss of pecuniary benefits to the dependents of the deceased by adopting multiplier 13	Rs.1,17,000 x 3 =Rs.15,21,000/-
2	Loss of love and affection	Rs. 40,000/-
3	Ambulance expenses	Rs. 2,500/-
4	Funeral expenses	Rs. 2,500/-
5	Loss of consortium	Rs. 10,000/-
6	Medical Expenses	Rs. 3,54,000/-
	Total	Rs. 19,30,000/-

7. In the award it is observed that if the award amount is not deposited within one month from the date of receipt of the order, the appellant was directed to pay penal interest at 9% per annum on the sum awarded for such delayed period of deposit.

8. The finding of negligence on the part of the driver of the appellant transport corporation bus who is responsible for the accident and consequential liability fixed on the appellant transport corporation to compensate the claimants is not seriously disputed and such finding is confirmed.

9. The only serious objection raised by the learned counsel for the appellant-Transport Corporation is with regard to the grant of penal interest at the rate of 9%. Insofar as the compensation towards loss of pecuniary benefits and other conventional heads are concerned, there was no objection by the

appellant's counsel and we find the same are just and reasonable.

10. As contended by the learned counsel for the appellant, the penal/default interest granted at 12% cannot be justified as per the decision of the Apex Court in National Insurance Co.Ltd., Vs. Keshav Bhahadur & Ors. (2004 ACJ 648). However, the rate of interest granted at 6% is raised to 7.5% per annum. The penal/default interest at the rate of 9% granted by the Tribunal is set aside.

11. Learned counsel for the respondents/claimants submitted that 2nd and 3rd petitioners have attained majority and they may be permitted to file appropriate application to declare major before the Tribunal.

12. Accordingly, this Civil Miscellaneous Appeal is partly allowed. While confirming the quantum of compensation granted by the Tribunal, we modify only the interest component as indicated above. In the result,

- (i) The award of the Tribunal-Rs.19,30,000/- is confirmed;
- (ii) The interest granted by the Tribunal at 6% per annum is enhanced to 7.5%.
- (iii) The penal interest granted by the Tribunal at 9% is set aside.
- (iv) The award amount is apportioned to the claimants as per the proportion directed by the Tribunal. Since it is stated that the 2nd and 3rd respondents have attained majority, on filing of appropriate application to declare them as major before the Tribunal, the Tribunal shall permit them to withdraw their respective shares.
- (v) This Court by order dated 07.08.2014 directed the appellant Transport Corporation to deposit the entire award amount along with accrued interest and costs. Learned counsel appearing for the appellant submits that entire award amount has been deposited before the Tribunal.
- (vi) The claimants are permitted to withdraw the award amount as ordered and apportioned by this Court as above.
- (vii) The appellant Transport Corporation is at liberty to withdraw the excess amount, if any, deposited before the Tribunal.

(viii) There will be no order as to costs in this appeal.

(ix) Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

nvsri

To

1.The Managing Director,Tamil Nadu
State Transport Corporation
Limited, Villupuram,No.3/137,
Salamedu, Vazhudareddy, Villupuram

2.The Principal District Judge,
Motor Accidents Claims Tribunal, Cuddalore.

+2 ccs to Ms.Ramya V.Rao Advocate sr.11860
+1 cc to Mr.S.Sairaman Advocate sr.11875

C.M.A.No.1510 of 2014

aa18/03/2016

सत्यमेव जयते

WEB COPY