

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.02.2016

CORAM

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

C.M.A.No.407 of 2015
& M.P.No.1 of 2015
& C.M.P.No.254 of 2016

The Managing Director
Tamil Nadu State Transport Corporation,
Division III, Kancheepuram

... Appellant/Respondent

vs.

1. Saraladevi
2. B.Murali

... Respondents/Petitioners

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 18.09.2014 passed in M.C.O.P.No.342 of 2012 on the file of the Motor Accidents Claims Tribunal (District Court - II), Kanchipuram.

For Appellant : Mr.Paramasivados

For Respondents: Mr.K.Varadha Kamaraj

JUDGMENT

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

The Transport Corporation is on appeal challenging the award dated 18.09.2014 passed in M.C.O.P.No.342 of 2012 on the file of the Motor Accidents Claims Tribunal (District Court - II), Kanchipuram.

2. It is a case of fatal accident. On 06.06.2012 at about 07.45 a.m. While the deceased M.Karthick, aged 17 years was travelling as a pillion rider of the motorcycle bearing Registration No.TN 21-AK-12-1 proceeding from VGN Nagar, Vaiyavoor Salai, the bus bearing Registration No.TN-21-N-1360 belonging to the appellant transport Corporation came in a rash and negligent manner, hit the motorcycle, due to which the said

Karthick was thrown away and the wheels of the respondent bus ran over and crushed the legs of the said Karthick. Immediately, the said Karthick was taken to the Government Head Quarters Hospital, Kancheepuram. Thereafter, he was referred to MIOT Hospital, Chennai, where his legs were amputated and inspite of the treatment given, he died on 17.06.2012. The claimants, who are mother, aged 39 years and father, aged 44 years have filed a claim for compensation in a sum of Rs.15,00,000/-. According to the claimants, the deceased was a Student and was doing part time silk saree business and was earning a sum of Rs.10,000/- per month.

3. In support of the claim, the father of the deceased was examined as P.W.1; one Kumar, who is stated to be an eye witness to the accident was examined as P.W.2 and Ex.P-1 to Ex.P.10 were marked, the details of which are as follows:-

Ex.No.	Date	Details
P1	09.06.2012	Xerox copy of the First Information Report
P2	10.04.2013	Xerox copy of the Charge Sheet
P3	11.06.2012	Xerox copy of the M.V.I. Report
P4	--	Xerox copy of the Rough Sketch
P5	18.06.2012	Xerox copy of the Postmortem Certificate
P6	07.08.2012	Xerox copy of the Legal Heir Certificate
P7	--	Xerox copy of the mark sheet
P8	--	Medical bills.
P9	--	Medical bills.

On behalf of the appellant Transport Corporation, while Ravi, conductor of the bus was examined as R.W.1 no document was marked before the Tribunal. सत्यमेव जयते

4. The Tribunal based on the oral evidence of the witnesses, the F.I.R. and also taking note of the fact that the rider of the vehicle was having valid driving licence to drive the two wheeler came to conclusion that the driver of the appellant Transport Corporation bus had driven the bus in a rash and negligent manner and was responsible for the accident and consequently liability was fixed on the appellant, to compensate the claimants. On this issue, learned counsel for the appellant has no serious objection with regard to the finding of the Tribunal as no material has been placed to come to a different conclusion from that of the conclusion arrived by the Tribunal.

5. Based on the oral and documentary evidence, the Tribunal granted the following amounts as compensation with interest at 7.5% per annum:-

Sl. No.	Head	Amount granted by the Tribunal
1	Loss of pecuniary benefits (4,500 x 12 x 14x2/3)	Rs. 5,04,000/-
2	Loss of love and affection	Rs. 30,000/-
3	Future Prospects 30%	Rs. 1,51,200/-
4	Funeral expenses	Rs. 5,000/-
5	Medical Expenses	Rs. 6,82,711/-
	Total	Rs.13,72,711/-

6. Insofar as the quantum of compensation is concerned, based on the evidence of P.W.1 as against the income of Rs.10,000/- per month claimed, the Tribunal fixed the notional income of the deceased at Rs.4,500/- per month in respect of the 17 years old deceased.

7. The Tribunal deducted 1/3 towards personal expenses of the deceased.

8. The only serious objection raised is that the Tribunal has fixed the income of the deceased at Rs.4,500/- per month, since the deceased is a student and not an earning member of the family.

9. In the decision reported in 2014(2) TNMAC 6 (SC) (V.Mekala V. M.Malathi and another), while dealing with the compensation granted in the case of a Student, the Honourable Supreme Court, after relying upon various decisions, fixed the monthly notional income at Rs.10,000/-. In the said decision, the Supreme Court held as follows:

"14. The High Court on the basis of medical evidence on record with reference to the fractures sustained by the Appellant to both the legs, rightly arrived at the conclusion that she has suffered 70% of permanent disablement and therefore, she was awarded the Compensation under the head of Loss of Earning in the impugned judgment taking into account monthly Notional Income of Rs.6,000/- in the absence of any document on record as she was a student. This assumption of the Courts below is on the lower side in view of the observations made by this Court in R.D. Hattangadi (supra).

.....

19. Therefore, in the light of the principles laid down in the aforesaid case, it would be just and proper for this Court, and keeping in mind her past results we take Rs.10,000/- as her monthly notional income for computation of just and reasonable compensation under the head of Loss of Income....."

(emphasis supplied)

10. Hence, in the light of the above decision, the notional income fixed by the Tribunal is far less. Further, the multiplier adopted by the Tribunal at 14 is also less and as per the decision in the case of Sarla Verma - vs. - Delhi Transport Corporation, 2009(2) TNMAC 1 (SC), the correct multiplier should be adopted is 18. As per the above decision of the Apex Court, the deduction towards personal expenses should be at 50%. But the Tribunal has only deducted 1/3rd towards personal expenses. The deceased died only after a period of 10 days and suffered a lot in the meantime. His legs were amputated. However, the Tribunal has not awarded any amount towards pain and suffering. Therefore, this Court finds no good reason to reduce the quantum of compensation awarded.

11. There is no serious objection in respect of the other amounts granted or the interest granted at 7.5% per annum.

12. Finding no merit, the Civil Miscellaneous Appeal is dismissed. This Court, by order dated 12.03.2015 directed the appellant to deposit the entire award amount with interest and costs. Learned counsel appearing for the appellant submits that the entire award amount has been deposited as per the order of this Court. The respondents/claimants have filed a petition in C.M.P.No.254 of 2016 seeking to withdraw the said amount. The respondents/claimants are permitted to withdraw their respective share as ordered by the Tribunal. Consequently, the connected miscellaneous petitions are closed. No costs.

Sd/-

Asst.Registrar (CO)

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Sub Asst. Registrar

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(Motor Accidents Claims Tribunal)
Kanchipuram.

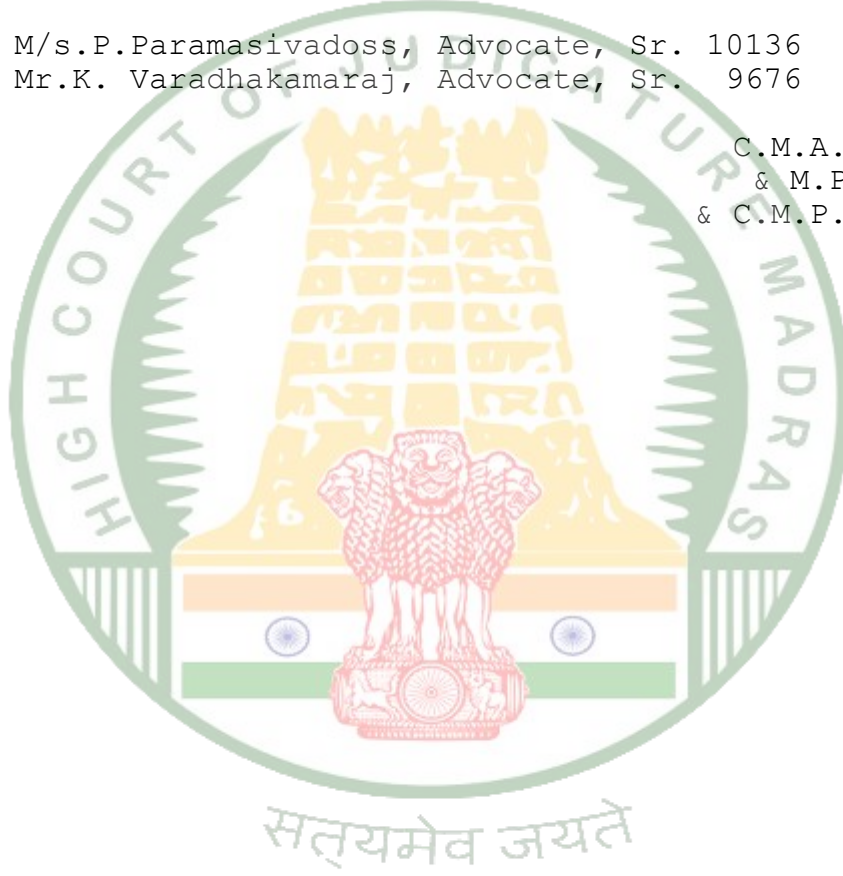
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