

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 01.12.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A. No.2750 of 2016 and

C.M.P.No.19869 of 2016

The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Kumbakonam. ... Appellant/Respondent

Versus

1.Sasikala
2.Minor Sakthivel
3.Minor Sathiya
4.Minor Manikandan
5.Natarajan
6.Saroja
(Minor Respondents represented by mother/
guardian/next friend of 1st respondent Sasikala)
.. Respondents/Petitioners

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 02.02.2016 made in M.C.O.P.No.757/2015 on the file of the Motor Accidents Claims Tribunal, (the Principal District Judge), Cuddalore.

For Appellant : Mr.D.Venkatachalam

J U D G M E N T

Aggrieved over the impugned award passed by the learned Tribunal, awarding a sum of Rs.14,50,000/- as against the claim of Rs.30,00,000/-, the Transport Corporation, Kumbakonam has brought this appeal questioning the quantum of compensation.

2.According to the claimants, on 01.11.2014 at about 8.00 p.m. when the deceased Marimuthu, was riding his bicycle on the Sattanadhapuram Agraharam Street at Sirkali, a bus bearing Registration No.TN-49-N-1593 belonging to the appellant, and coming from the opposite direction driven by its driver, is said to have hit the deceased cyclist. Due to such accident, the deceased was thrown out of the cycle and he sustained grievous injuries all over the vital parts of the body. Although he was admitted in Government Hospital, Sirkali, and subsequently, shifted to Chidambaram RMMCH Hospital and Pondicherry JIPMER Hospital, he was not able to recover from the treatment and finally he succumbed to the

multiple injuries. According to the claimants, the accident happened only due to the rash and negligent driving of the driver of the bus.

3.The claimants, after filing the FIR and registering a case in Crime No.527 of 2014 on the file of the Sirkali Police Station against the driver of the offending vehicle bearing Registration No.TN-49-N-1596 for the offence under Sections 279 and 337 of IPC, which has been subsequently altered into Section 304(A) of IPC, has made a claim petition before the Tribunal stating that when the deceased was going on his bicycle, the bus belonging to the appellant/Transport Corporation, driven by its driver in a rash and negligent manner, dashed against him and subsequently he died, as a result, a sum of Rs.15,000/- per month earned by the deceased has been lost. The Tribunal, after entertaining the plea from the claimants that the deceased was working as Mason and was earning a monthly income of Rs.15,000/- and considering the age and nature of his work as mason, taking a sum of Rs.7,500/- as notional monthly income, as there were six claimants, deducted 1/4th of his income towards his personal expenses and had rightly applied the multiplier '17' and on this basis, a sum of Rs.11,47,500/- has been awarded under the head of 'loss of dependency'.

4.While coming to the loss of consortium, a sum of Rs.50,000/- has been awarded by the Tribunal, as the deceased wife, is aged about 29 years and again under the head loss of love and affection a sum of Rs.2 lakhs @ Rs.50,000/- each, has been awarded to all the dependants/claimants 1 to 4 and a sum of Rs.10,000/- each to the parents towards loss of love and affection and the Tribunal has awarded a sum of Rs.25,000/- towards funeral expenses and the same, in my view, are very reasonable. The Tribunal on the issue of who had caused the accident, has clearly found against the driver of the bus belonging to the appellant/Transport Corporation holding that on 01.11.2014, at about 8.00 p.m., while the deceased was riding the vehicle at Sattanadhapuram Agragaram Street, at Sirkali, on the right side of the road, the bus belonging to the Transport Corporation bearing Registration No.TN-49-N-1596 he dashed against the cyclist. Due to the accident, he was thrown out of the cycle and fell down on the road and since he sustained grievous injuries on his head and all over the body, he was taken to three hospitals. Firstly, he was taken to the Government Hospital, Sirkali, for first-aid and then, he was referred to RMMCH Hospital, Chidambaram and further he was shifted to JIPMER Hospital, Puducherry. Due to the accident, he succumbed to the grievous in spite of the treatment. Therefore, the Tribunal, on perusal of the FIR, which has been marked as Ex.P1-dated 02.11.2014 and Ex.P5-Charge sheet, clearly mentioning the cause of the accident, had come to the conclusion that the driver of the bus is only responsible for causing the accident. The Tribunal has rightly answered that the driver of the bus is only responsible for the accident and consequently, the appellant/Transport Corporation as the owner of the vehicle, has rightly come to the conclusion that the

appellant/Transport Corporation is liable to pay the compensation.

5. Thereafter, while coming to the quantum of compensation, as the deceased was working as mason and was earning a sum of Rs.15,000/- p.m., in the absence of any oral and documentary evidence to prove his income, the Tribunal has taken a sum of Rs.7,500/- as the notional monthly income. Although the Tribunal has taken the amount of Rs.7,500/- as the notional monthly income, in my considered opinion, it appears to be on the higher side. However, the Tribunal has rightly applied the ratio laid down by the Hon'ble Apex Court in Sarla Verma and Others v. Delhi Transport Corporation and another reported in 2009 (6) SCC 121, wherein it has been held that if the age of the deceased is below 40 years, an addition of 50% of the actual salary has to be made towards future prospects. But, the Tribunal has committed a serious error in not awarding 50% of the actual salary towards future prospects. Therefore, re-determining the notional income or adding 50% towards his actual salary, would not make any difference.

6. Coming to other heads, under the loss of consortium, considering the age of the deceased wife, a sum of Rs.50,000/- each has been awarded by the Tribunal, towards loss of consortium and loss of love and affection. The Tribunal has awarded a sum of Rs.50,000/- each to the claimants 2 to 4/minor children towards loss of love and affection and the same is reasonable. With regard to parents, a sum of Rs.10,000/- each has been fixed towards loss of love and affection. Therefore, this Court is not inclined to entertain this appeal, for the reason that the amount awarded under various heads are found reasonable. Accordingly, this Civil Miscellaneous Appeal fails and the same is dismissed. No costs. Consequently, connected C.M.P. is closed.

7. Since the learned counsel for the appellant/Transport Corporation submitted that the appellant has deposited 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, failing which the interest payable would become 12% for the delayed period. On such deposit, the claimants 1, 5 and 6 are permitted to move petitions before the learned Tribunal for withdrawal of the apportioned amount. Insofar as the minor shares are concerned, the 1st claimant, being the mother, is permitted to withdraw the accrued interest which is lying in deposit, once in three months and periodically renewed, till they attain majority.

Sd/-
Asst.Registrar

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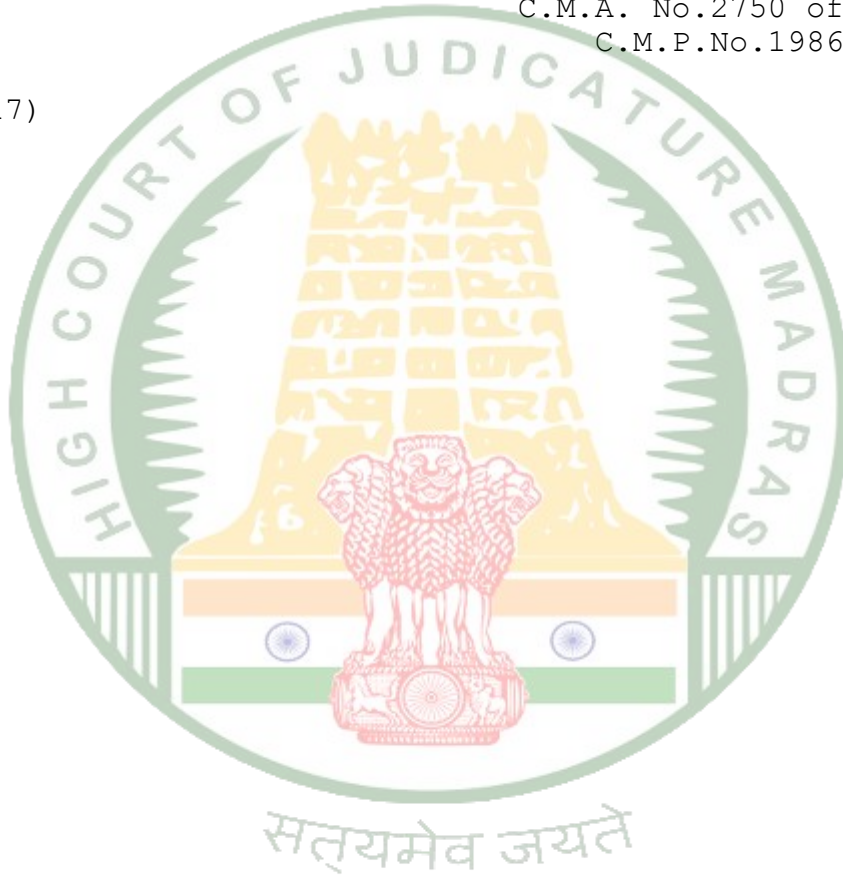
1.The Principal District Judge)
The Motor Accidents Claims Tribunal,
Cuddalore.

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

+1cc to Mr.D.Venkatachalam,Advocate sr.72923

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