

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 03.03.2016

CORAM

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

C.M.A. NO. 461 OF 2016
AND
C.M.P. NO. 3535 OF 2016

The Managing Director
Tamil Nadu State Transport
Corporation, Railway Station Road
Kumbakonam Town, Taluk & Dt. ... Appellant/ Respondent

- Vs -

1. Chandra
2. Pon Surender ... Respondents/ Petitioner

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 18.12.2013, passed by the Motor Accident Claims Tribunal, District Judge, Tiruvarur, made in MCOP No.70 of 2013.

For Appellant : Mr. D.Venkatachalam

For Respondents: Mr. M.Sivaraman

JUDGMENT

(DELIVERED BY R.SUDHAKAR, J.)

Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondents/claimants.

2. The appellant/Transport Corporation has filed the appeal challenging the award dated 18.12.2013, passed by the Motor Accident Claims Tribunal, District Judge, Tiruvarur, made in MCOP No.70 of 2013.

3. It is a case of fatal accident. On 09.09.2012, at about 12.00 noon, when the deceased Ponmudi, aged around 57 years, was riding his Hero Honda motorcycle bearing Regn. No.NPY - 01-9961 on the Myladuthurai Tiruvarur Road, the bus, belonging to the appellant/Transport Corporation, bearing Regn. No.TN-49-N-1338, driven by its driver in a rash and negligent manner, coming in the opposite direction, hit the motorcycle on which the deceased was riding, due to which the deceased was thrown away from his

motorcycle and suffered grievous injuries. Initially the deceased was treated at the Government Hospital, Mayiladuthurai and was referred for further treatment to Thanjavur Government Hospital where the deceased succumbed to the injuries and died on 26.09.2012. A case was registered in relation to the said accident.

4. The deceased, on the date of accident, was working as Sub Inspector of Police and earning a salary of Rs.28,205/= per month. The respondents, viz., the wife and son of the deceased have filed the claim petition claiming a sum of Rs.15,00,000/= as compensation.

5. In support of the claim, the first claimant, viz., the wife of the deceased was examined as P.W.1. One Rajaram, an eye witness to the occurrence was examined as P.W.2 and Exs.P-1 to P-11 were marked, the details of which are as follows:-

Ex.P-1	-	Copy of the FIR
Ex.P-2	-	Copy of the Post-mortem certificate of deceased
Ex.P-3	-	Copy of Death Certificate of the deceased
Ex.P-4	-	Copy of the legal heir certificate
Ex.P-5	-	Copy of the salary certificate of the deceased
Ex.P-6	-	Motor Vehicle Inspector Report
Ex.P-7	-	Sugam Scan receipt
Ex.P-8	-	Change of Section Report
Ex.P-9	-	Medical Bills
Ex.P-10	-	Certificate issued by Vinodhagan Hospital
Ex.P-11	-	Certificate to show pension received by P.W.1

6. On the side of the respondents, neither any witnesses were examined nor any documents were marked.

7. The Tribunal based on the oral evidence of the P.W.1, the F.I.R. and also taking note of the corroborating evidence in the form of the evidence of P.W.2, eye witnesses to the occurrence, which has been adduced to prove that the bus was driven in a rash and negligent manner coupled with the other documentary evidence and further there being no evidence adduced on behalf of the appellant to refute the eye witness testimony as to the rash and negligent driving of the bus, came to the conclusion that the accident was caused due to the rash and negligent driving by the driver of the bus and, therefore, the liability was fixed on the appellant herein and consequently the appellant was directed to compensate the claimants. The Tribunal fixed the monthly income of the deceased at Rs.28,205/=

and after deducting one-third towards personal expenses and while adopting a multiplier of 9, though held that the claimants are entitled to a higher amount of compensation than what was claimed, however, restricted the same to the compensation sought for and, accordingly, awarded a sum of Rs.15,00,000/= as compensation.

8. Accordingly, the Tribunal awarded a compensation of Rs.15,00,000/= with interest at the rate of 7.5% from the date of claim petition till date of payment/deposit with appropriate apportionment of the same between the claimants. Aggrieved by the said award, the appellant/Transport Corporation is before this Court by filing this appeal.

9. The appellant/Transport Corporation has no quarrel about the finding of the Tribunal with respect to the fixation of liability on the driver of the appellant/Transport Corporation. However, the only point raised by the learned counsel appearing for the appellant is that the quantum of compensation awarded by the Tribunal is on the higher side, as the age of the deceased is 57 years. Per contra, learned counsel appearing for the respondents/claimants submitted that the Tribunal, though found that the claimants are entitled to a higher compensation, however, in view of the fact that the claimants have restricted their claim to a sum of Rs.15,00,000/= awarded the said amount and, therefore, no interference is warranted with the well considered award.

10. This Court has given its careful consideration to the above contention advanced by the learned counsel for the parties. The deceased is aged 57 years, as is accepted by the parties and there is no dispute as to the income fixed by the Tribunal. However, learned counsel appearing for the appellant/Transport Corporation submits that split multiplier has to be adopted while arriving at the "Loss of Income", as the deceased is aged 57 years and has only one more year of service. Even if the split multiplier, as submitted by the learned counsel appearing for the appellant is accepted, the "Loss of Income" to the family works out to Rs.11,28,200/=. Further, it is to be noted that no compensation has been awarded under any of the other heads. The first claimant is entitled to compensation under the head "loss of consortium" and the second claimant is entitled to compensation under the head "loss of love and affection" as both of them have suffered the loss of the deceased. Accordingly, this Court awards a sum of Rs.1,00,000/= as compensation to the first claimant under the head "Loss of Consortium" and Rs.1,00,000/= as compensation to the second claimant under the head "Loss of Love and Affection". Further as is evident from the order of the Tribunal, no amount has been awarded by the Tribunal under the heads of "Transportation Expenses" and "Funeral Expenses". Accordingly, Rs.15,000/= is awarded under the head "Transportation Expenses" and Rs.15,000/= is awarded under the head "Funeral Expenses".

11. Further, this Court finds that the accident had happened on 9.9.12 and the deceased was taking treatment till 26.9.12 on which date he succumbed to the injuries. In all, the deceased has been in the hospital for a period of 15 days and has suffered much pain and suffering during the said time. The deceased had suffered grievous injuries on the head, abdomen and all over the body. However, no amount has been awarded under the head "pain and suffering". In such view of the matter, this Court awards a sum of Rs.90,000/= under the head "Pain and Suffering".

12. Accordingly, the award of Rs.15,00,000/= passed by the Tribunal is modified to one of Rs.14,48,200/= as hereunder :-

Loss of Income	-	Rs.11,28,200/=
Loss of consortium for first claimant	-	Rs.1,00,000/=
Loss of Love & Affection	-	Rs.1,00,000/=
Funeral Expenses	-	Rs.15,000/=
Transportation Expenses	-	Rs.15,000/=
Pain & Suffering	-	Rs.90,000/=
Total Compensation	-	Rs.14,48,200/=

13. In the result, this Civil Miscellaneous Appeal is allowed with the above modification. The appellant/Transport Corporation is directed to deposit the entire award amount as above, less the amount deposited at the time of filing the appeal, along with interest at the rate of 7.5% to the credit of MCOP No.70/2013 within a period of eight weeks from today. On such deposit, the claimants are permitted to withdraw the amount as per the apportionment made by the Tribunal in consonance with the modification made by this Court as above. Consequently, connected miscellaneous petition is closed. However, in the circumstances of the case, there shall be no order as to costs.

Sd/-
Asst.Registrar (CO)

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Sub Asst. Registrar

GLN

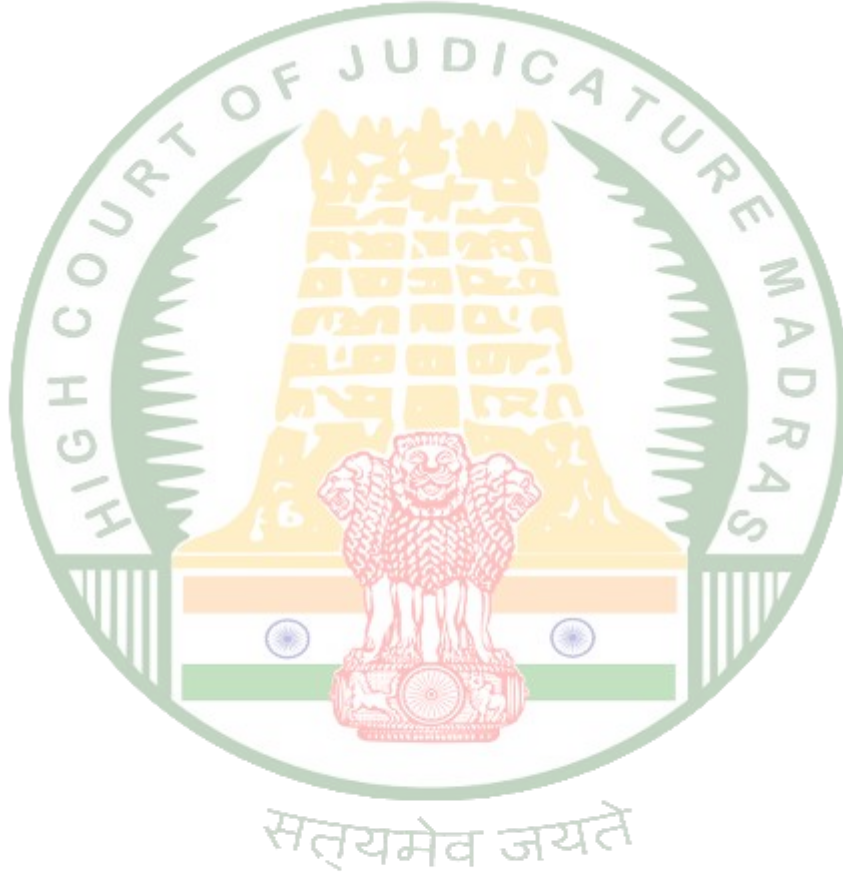
To

The Motor Accident Claims Tribunal
The District Judge
Tiruvarur.

1 cc to Mr.D. Venkatachalam, Advocate, Sr. 13579
1 cc to Mr.M. Sivaraman, Advocate, Sr. 13514

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