

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.04.2016

CORAM

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

C.M.A.No.757 of 2016
and CMP No.6195 of 2016

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

vs.

1. Sakunthala
2. Stalin
3. Minor Pravinkumar
4. Minor Ezhilarasan
5. Vedyammal

(1st respondent is the next friend,
guardian for 3rd and 4th respondents-
minors)

... Respondents/Petitioners

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 31.10.2014 passed in M.C.O.P.No.90 of 2013 on the file of the Motor Accidents Claims Tribunal (Chief Judicial Magistrate Court), Tiruvannamalai.

For Appellant : Mr.P.Paramasivadoss

JUDGMENT

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

The Transport Corporation is on appeal challenging the Judgment and decree dated 31.10.2014 passed in M.C.O.P.No.90 of 2013 on the file of the Motor Accidents Claims Tribunal (Chief Judicial Magistrate Court), Tiruvannamalai.

2. It is a case of fatal accident. On 06.02.2013 at about 04.00 p.m., when the deceased Elumalai, aged about 38 years was riding his T.V.S.Super XL two wheeler bearing

Registration No.TN.25c 6500 from Anvarapath towards Chengam, in the extreme left side of the road, in soil path near Iron Shop of M.G.S.Boy at Millath Nagar in Chengam to Polur Road, at that time, the appellant Corporation Bus bearing Registration No.TN.25/N/0300, driven in a rash and negligent manner, dashed against the deceased vehicle and caused the accident, due to which, the deceased sustained serious injuries and was taken to Government Hospital, Chengam immediately, however, he died on the way to the Hospital at Chengam. The claimants, who are wife, major son, two minor sons and mother of the deceased have filed a claim for compensation for a sum of Rs.70,00,000/-.

3. In support of the claim, the wife of the deceased was examined as P.W.1 and one Elumalai was examined as P.W.2. and Exs.P-1 to Ex.P.4 were marked, the details of which are as follows:-

Ex.No.	Details
P1	Copy of the FIR
P2	Postmortem certificate
P3	Death certificate
P4	Salary certificate

On behalf of the Transport Corporation, one Sudhakar, the driver of the bus was examined as R.W.1, Govindaraj, was examined as R.W.2 and Kamaraj was examined as R.W.3 and Exs.R1 to R5 were marked before the Tribunal, the details of which are as follows:-

Ex.No.	Details
R1	Copy of the complaint given by the driver
R2	Copy of the complaint given to Superintendent of Police
R3	Copy of the complaint given by the Conductor
R4	Rough sketch copy
R5	Copy of the complaint given by the office of the Corporation to Superintendent of Tiruvannamalai District.

4. The Tribunal based on the oral evidence of the witnesses, the F.I.R. and also taking note of the fact that the deceased was also the cause for the accident came to conclusion that the driver of the bus as well as the driver of the Transport Corporation were responsible for the accident and

consequently 75% liability was fixed on the Transport Corporation and 25% liability was fixed on the deceased and the Corporation being the owner of the accident vehicle to compensate 75% to the claimants.

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 income	Rs.16,11,360/-
2	Funeral expenses	Rs. 10,000/-
3	Loss of consortium to 1 st claimant-wife	Rs. 50,000/-
4	Loss of love and affection (5 claimants)	Rs. 1,00,000/-
5	Transport expenses	Rs. 10,000/-
	Total	Rs.17,81,360/-
	75% on Rs.17,81,360/-	Rs.13,36,020/-

6. As far as the plea of the Transport Corporation that the liability fixed on the Corporation at 75% should be reduced is concerned, it is not known as to whether the claimants have filed an appeal for modification for the liability fixed. But, on a perusal of the award of the Tribunal, it is clear that the Tribunal, taking into consideration the nature of the accident and on the basis of evidence on record, came to the conclusion that there is negligence on the part of the driver of the Transport Bus and hence fixed 75% liability on the Transport Corporation. Further, if there is an appeal by the claimants for setting aside the award fixing 25% negligence on the part of the deceased, it is a different matter. In any event, as far as the reasoning given by the Tribunal for fixing the liability at 75%, we find no justification to reduce the same. Since, no case is made out by the appellant for reducing the percentage of compensation, the liability fixed by the Tribunal cannot be reduced any further.

7. Insofar as the compensation is concerned, the Tribunal taking the monthly income as Rs.11,190/- and deducting Rs.2238/- (1/5th) and adopting the multiplier of 15, calculated the loss of income at Rs.16,11,360/-. But, the Tribunal has not granted any amount for future prospects in the case of the deceased who was 38 years old, working as a Village Assistant. In view of this aspect, we find that there is no scope for reduction of the quantum of compensation. It is made clear that when the

claimants are before us by filing appropriate appeal, the question of just compensation can be considered. At this stage, we find no reason to entertain this Civil Miscellaneous Appeal. Hence, the same is dismissed. No costs. Connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar (CS-VI)

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Sub Assistant Registrar

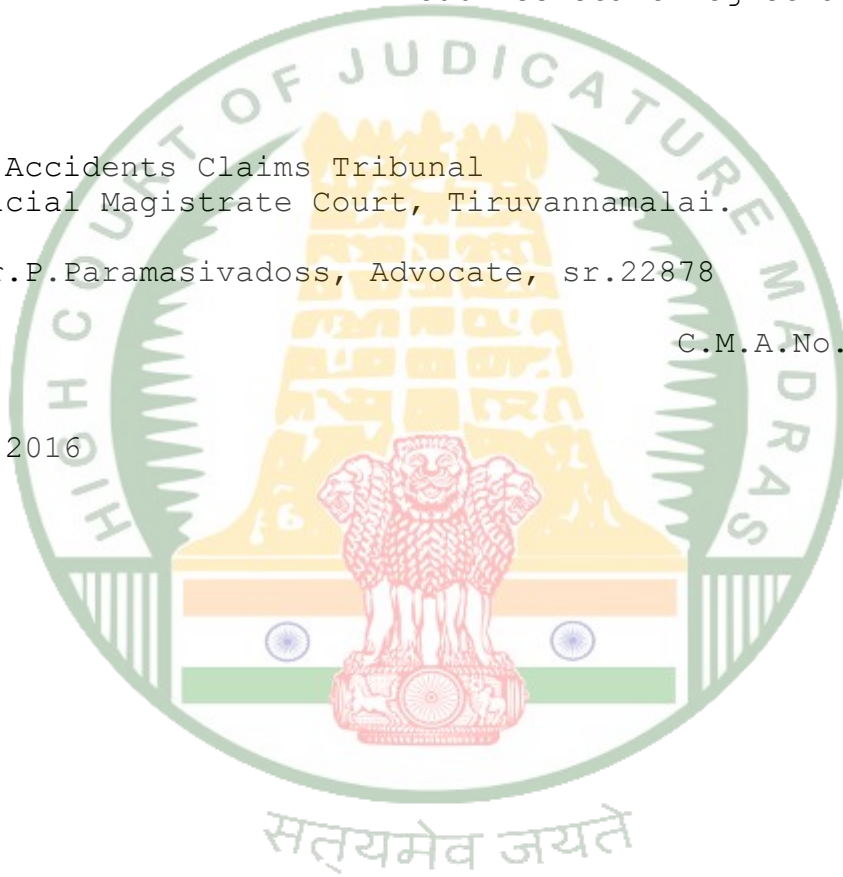
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To
The Motor Accidents Claims Tribunal
Chief Judicial Magistrate Court, Tiruvannamalai.

1 cc to Mr.P.Paramasivadoss, Advocate, sr.22878

C.M.A.No.757 of 2016

skv co
kra 04.05.2016



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