

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.01.2016

CORAM

The Honourable Mr. Justice T.RAJA

C.M.A.No.454 of 2011

and

C.M.A.No.3331 of 2012

The Managing Director,
Tamil Nadu State Transport
Corporation Ltd.,
Villupuram Division III,
No.1, Sheikpet Nadu Street,
Vedhachalam Maligai,
Kancheepuram.

..Appellant in CMA.454/2011 &/
Respondent
Respondent in CMA.3331/2012/
Respondent

..vs..

1.S.Kamachi
2.S.Vijayalakshmi
3.Minor S.Saranya
4.Minor S.Jothi
5.Minor Ayyanar
6.Minor Sagadevan
(Minors rep. by mother and next
Friend S.Kamachi)

..Respondents in CMA.454/2011 &/
Claimants

Appellants in CMA.3331/2012/
Claimants

Common Prayer:These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the fair and decretal order dated 19.10.2009 made in M.C.O.P.No.168 of 2006 on the file of the Motor Accident Claims Tribunal (Small Causes Court No.II), Chennai.

For Appellant/Transport Company : Mr.S.S.Swaminathan
For Respondents/Claimants : Mr.S.Parthasarathy

COMMON JUDGMENT

Assailing the award of compensation dated 19.10.2009 in M.C.O.P.No.168 of 2006 on the file of the Motor Accident Claims Tribunal, Small Causes Court No.II, Chennai, CMA.No.454 of 2011 has been filed by the Appellant/Transport Corporation on the grounds of negligence and the quantum. Not being satisfied with the above said quantum, CMA No.3331 of 2012 has

been filed by the Appellants/claimants for enhancement of the award amount. Since both the appeals are arising out of the same award, the appeals are taken up together and disposed of by way of this common judgment and the parties are referred as Transport Corporation and Claimants hereafter.

2.The brief facts of the case is as follows:

On 26.09.2005 at about 2.00 p.m., the deceased Sadiayappan met with an accident in the bus bearing Registration No.TN 21 N 0528 on the GST Road, near Peerkankaranai Police Station and he succumbed to the injuries sustained by him in the hospital.

3.The Tribunal after evaluating the evidence adduced by the parties held that the driver of the Transport Corporation who drove the bus in a negligent manner is responsible for the accident and awarded a sum of Rs.4,69,500/- as compensation to the claimants.

4.Aggrieved over the same, the present appeals have been preferred.

5.The learned counsel for the Transport Corporation has submitted that the Tribunal had erred that the driver of the Transport Corporation alone was responsible for the said accident. He would submit that Tribunal erred in not considering the evidence of R.W.1 and it ought to have held that the deceased was also responsible for the accident and thereby liable for contributory negligence. He also contended that without taking into consideration of the Death Certificate, the Tribunal had fixed the age of the deceased as 41 and multiplier adopted by the Tribunal is on the higher side. He further submitted that the rate of interest awarded at 9.5% on the compensation amount is against the dictum of the Hon'ble Supreme Court. Further, he contended that the total compensation awarded by the Tribunal is highly excessive, ex-orbitant and not sustainable in the eye of law and hence, contended that the award passed by the Tribunal is liable to be set aside.

6.Per contra, the learned counsel for the claimants submitted that the deceased was working as a mason and he was earning a sum of Rs.6000/- as monthly income, but the Tribunal has only taken the monthly income of the deceased as Rs.3000/- and prays for enhancement of monthly salary as Rs.6000/-. He submitted that Tribunal without considering the number of dependants, deducted 1/4th towards the personal expenses and ought to have deducted 1/5th towards personal expenses of the deceased. He also contended that considering the post mortem certificate, the Tribunal ought to have adopted 16 multiplier instead of 15. He further submitted that no amount has been awarded under the head of transportation and expectation of life. That apart, the counsel for the claimants submitted that the amount awarded under other heads like funeral expenses,

loss of estate and loss of consortium also on the lower side. Hence, proper enhancement has to be made on the said heads also.

7. Keeping the submissions made by the learned counsel on either side, I have carefully gone through the materials available on record and I find that as rightly observed by the Tribunal, the accident had occurred only due to the rash and negligent driving of the driver of the Transport Corporation and the same is affirmed. In regard to fixation of monthly salary of the deceased, the Tribunal has rightly fixed the monthly income at Rs.3000/- without any proof filed to show that the deceased earned Rs.6000/- per month as salary. Hence, no enhancement in regard to monthly salary is required as contended by the learned counsel for the claimants.

8. Further, I find that the Tribunal has awarded only a sum of Rs.10,000/- towards loss of consortium, Rs.50000/- towards loss of love and affection and Rs.2000/- towards funeral expenses which sums appear to be on the lower side. In *Rajesh & others Vs. Rajbir Singh & others* [2013 (3) CTC 883], the Hon'ble Supreme Court held that it would be just and reasonable to award atleast Rs.1 lakh for loss of consortium and hence, a sum of Rs.90,000/- in addition to Rs.10,000/- is hereby awarded under the head of loss of consortium. As stated above, the Tribunal has awarded Rs.50,000/- towards loss of love and affection. Since the minor claimants have lost their father at their tender age, it would be appropriate to enhance the said sum to Rs.1 lakh. Further, a sum of Rs.2000/- awarded towards funeral expenses is enhanced to Rs.10,000/- and it is made clear that the amount awarded by the Tribunal under other heads remain unaltered.

9. The break-up re-assessed details of the enhanced amount is as follows:-

Heads	Amount
Loss of Income	Rs.4,05,000
Funeral Expenses	Rs. 10,000
Loss of Estate	Rs. 2,500
Loss of Consortium	Rs.1,00,000
Loss of Love & Affection	Rs.1,00,000
Total	Rs.6,17,500

Consequently, a sum of Rs.4,69,500/- awarded by the Tribunal is hereby enhanced to Rs.6,17,500/-.

10. In view of the above modification, the Transport Corporation is directed to deposit the entire enhanced amount of Rs.6,17,500/- with proportionate interest after deducting the amount that has already been deposited by them, if any, within a period of six weeks from the date of the receipt of a copy of this order. The claimants are entitled for the above

said enhanced compensation amount with proportionate interest. On such deposit being made, the first claimant being the wife of the deceased and second claimant, daughter of the deceased are permitted to withdraw their share amount with proportionate interest as apportioned by the Tribunal after giving credit to the amount already withdrawn by them, if any. The other claimants being minors, their share amount shall be deposited in any one of the nationalised bank till they attain majority. The first claimant being the mother and natural guardian of the minor claimants, is permitted to withdraw the accrued interest of the minors' share amount once in every three months.

11. In the result, the Civil Miscellaneous Appeal filed by the claimants in CMA.No.3331 of 2012 is allowed in part in the above terms and the Appeal filed by the Transport Corporation in CMA.No.454 of 2011 is hereby dismissed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

DP

To

1. The Motor Accident Claims Tribunal,
(Small Causes Court No.II),
Chennai.

2. The Record Keeper,
V.R. Section,
High Court, Madras.

+ 1 cc to Mr.S. Parthasarthy, Advocate Sr.1760
+ 2 ccs to Mr.S.S. Swaminathan, Advocate Sr.16569

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and
C.M.A.No.3331 of 2012

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