

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.04.2016

CORAM

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

C.M.A. No.944 of 2016

&

C.M.P. No. 7328 of 2016

The Managing Director
Metropolitan Transport Corporation
Pallavan Salai,
Chennai 2

...Appellant/Respondent

Vs.

1.A.Selvi
2.A.Karthick (Minor)
3. A.Bhuvaneswari (Minor)
4. A.Pattambal

...Respondents/Petitioners

Petitioners 2&3 are minor represented by
their mother/Natural Guardian 1st
Petitioner A.Selvi.

Prayer: Civil Miscellaneous Appeal as against the Judgment and
decree dated 28.10.2013 made in M.C.O.P. No.2320 of 2011 on the
file of Motor Accidents Claims Tribunal (VI Court of Small
Causes), Chennai.

For Appellant :: Mr.S.Sivakumar

For Claimant :: M/s.V.Ramya V.Rao

J U D G M E N T

This Civil Miscellaneous Appeal is preferred by the
Insurance Company as against the judgment and decree dated
28.10.2013 made in M.C.O.P. No.2320 of 2011 on the file of Motor
Accidents Claims Tribunal (VI Court of Small Causes), Chennai.

2. A 36 year old Painter, by name A.Annadurai, met with
a fatal accident on 26.10.2010 at 21.30 hours near Beach
Railway Station, when the MTC bus bearing Registration No.TN-01-
N-7489, which was driven in a rash and negligent manner hit the

said A.Annadurai, who was riding in a motorcycle bearing Registration No.TN-22-BW-1864 and in the said accident, he succumbed to death. The legal heirs, being the wife, minor son and daughter of the deceased and his mother, filed claim petition claiming compensation to the tune of Rs.10 lakhs stating that the income of the deceased was Rs.500/- per day. The Tribunal, based on the oral and available documentary evidence, by stating that the income of the deceased was not established through documentary evidence and in the absence of the same, notionally fixed the monthly income of the deceased at Rs.4,500/- and awarded compensation with interest at 7.5% per annum under the following heads:-

Sl .N o.	Head	Amount granted by the Tribunal
1	Loss of dependency	Rs. 9,11,160/-
2	Transport to hospital and loss of estate	Rs. 10,840/-
3	Funeral expenses	Rs. 25,000/-
4	Loss of love and affection and mental agony	Rs. 2,00,000/-
5	Loss of consortium	Rs. 1,00,000/-

Though the total compensation comes to Rs.12,47,000/-, the Tribunal has granted compensation to the tune of Rs.12,50,000/-. Aggrieved over the said award, the Transport Corporation has come forward with this appeal.

3. The learned counsel for the appellant Corporation contended that when the claim was only Rs.10 lakhs, the Tribunal ought not to have granted compensation to the tune of Rs.12,50,000/-. That apart, since the deceased had driven the motorcycle in a rash and negligent manner and dashed against the MTC bus, the accident had occurred and hence the deceased was only responsible for the accident and therefore the claimants are not entitled for any relief, however higher compensation was awarded by the Tribunal. He further contended that the deceased being a Painter, self employed, no amount need be granted under future prospects. That apart, according to him, the Tribunal, at least ought to have fixed 50% negligence on the part of the deceased. Based on these, the learned counsel contended that the award has got to be interfered with.

4. Heard the learned counsel for the appellant and the

learned counsel who took notice for the claimants.

5. A glance at the award of the Tribunal would make it clear that for the accident that took place on 26.10.2010, the Tribunal has fixed at Rs.4,500/- per month, in the absence of proof of income. The Hon'ble Apex Court in the case of "Syed Sadiq and others versus Divisional Manager, United India Insurance Co.Ltd." reported in 2014 ACJ 627, in respect of a vegetable vendor, who sustained injuries in an accident which occurred in 2008, determined Rs.6500/- as the monthly income. Hence the monthly income fixed at Rs.4,500/- cannot be said to be excessive. That apart, as could be seen from the narration of the events and discussion made by the Tribunal, the appellant Corporation has not established the negligence on the part of the deceased. Further, the Tribunal has rightly given 50% towards future prospects based on the monthly income fixed at Rs.4,500/-. In any event, the compensation awarded under other heads viz., loss of love and affection, loss of consortium, Transport and funeral expenses cannot be said to be excessive. Hence, I find no reason to interfere with the award of the Tribunal.

6. Thus, finding no merit, this Civil Miscellaneous Appeal is dismissed. No costs. Connected miscellaneous petition is closed.

7. The Appellant Transport Corporation is directed to deposit the entire award amount together with proportionate costs and interest @ 7.5% per annum from the date of claim petition, to the credit of M.C.O.P.No.2320 of 2011 on the file of the Motor Accident Claims Tribunal, VI Court of Small Causes, Chennai, if not already deposited within a period of six weeks from the date of receipt of a copy of this order and on such deposit being made, the major respondents/claimants are entitled to make necessary applications to withdraw their respective shares as apportioned by the Tribunal. As far as the share of the minors are concerned, the same shall be invested in a nationalized Bank under Fixed Deposit Scheme initially for a period of three years and thereafter be renewed periodically. It is made clear that the 1st claimant, wife of the deceased is permitted to withdraw the interest accrued from such fixed deposit once in three months.

Sd/-
Assistant Registrar (CS-IV)

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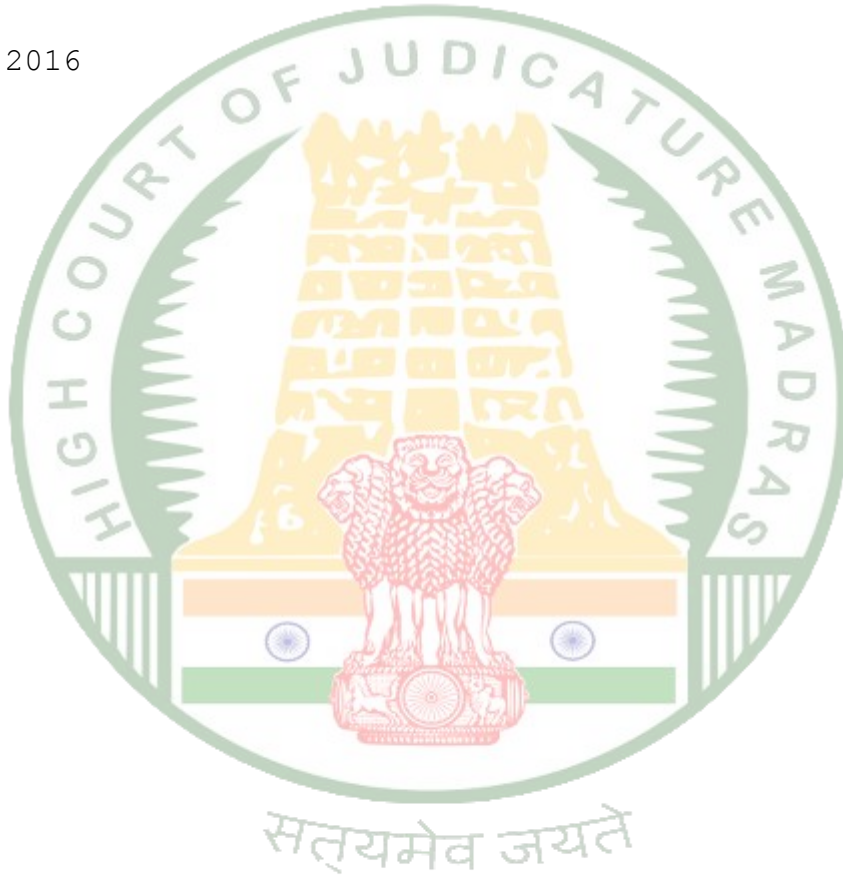
Sub Assistant Registrar

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To
The Motor Accidents Claims Tribunal VI Court of Small Causes,
Chennai.

C.M.A. No. 944 of 2016

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