

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.04.2016

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G. RAMESH
and
THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

C.M.A.No.3284 of 2014
and Cross Objection No.22 of 2016

The Managing Director
Tamil Nadu State Transport
Corporation Limited
Villupuram Division
No.3/137, Salamedu
Valudhareddy Post
Villupuram

...Appellant/Respondent in CMA
...Respondent in Cross.Obj.22/2016

vs.

1.Chitra
2.Minor.Ashwini
3.Minor.Aravind
4.Minor.Abisha
Minors 2 to 4 are represented
through the next friend and mother Chitra
5.Krishnaveni

..Respondents/Petitioners
in C.M.A.3284/2014
.Cross Appellants in Cross
Objection No.22/2016

Civil Miscellaneous Appeal and Cross Objection filed
under Section 173 of Motor Vehicles Act, 1988 against the
judgment and decree dated 01.10.2012 made in M.C.O.P.No.1076 of
2007 on the file of Motor Accident Claims Tribunal, (Principal
District Judge), Tiruvallur.

For Appellant/
Transport Corporation : Mr.S.Saravanan

For Respondents/
claimants : Mr.P.K.Ponnusamy for
Mr.Anand & Surya

COMMON JUDGMENT

(Judgment of the Court was delivered by HULUVADI G. RAMESH, J.)

The Tamil Nadu State Transport Corporation has filed C.M.A.No.3284 of 2014 challenging the quantum of compensation while the claimants filed Cross Objection No.22 of 2016 seeking enhancement of compensation made in M.C.O.P.No.1076 of 2007, dated 01.10.2012 on the file of Motor Accident Claims Tribunal, Principal District Judge, Tiruvallur.

2. It is a case of fatal accident. On 05.08.2006, around 21.00 hours, when the deceased/Arivazhagan was proceeding in his two-wheeler bearing Reg.No.TN-22-X-3582 with his friend Bhaskar as pillion rider towards Mappedu, the bus bearing Reg.No.TN-21-N-0143, which was driven in a rash and negligent manner came on the opposite direction and dashed against the two-wheeler, due to which, the deceased sustained grievous injuries and inspite of the treatment given, he died on the same day. A case has been registered against the driver of the bus bearing Reg.No.TN-21-N-0143 in Crime No.107/2006 under Section 304(A) IPC on the file of B-6, Mappedu Police Station. The respondents herein/claimants, viz., the wife and children of the deceased, filed a claim petition for a compensation of Rs.35,00,000/-.

3. In support of the claim, the wife of the deceased examined herself as P.W.1 and one Arunachalam, who is an eye-witness to the accident, was examined as P.W.2 and one Dhanasekaran was examined as P.W.3 and Exhibits P-1 to P-11 were marked. On behalf of the Transport Corporation, neither any witness was examined nor any document was filed.

4. The Tribunal, taking note of the oral evidence of P.W.2 and Exhibits P.1 and P.2, held that due to the rash and negligent driving by the driver of the bus, the accident had occurred and consequently, fixed the liability on the Transport Corporation to compensate the claimants.

5. Before the Tribunal, it was averred by the claimants that the deceased was working as Box boy in Southern Railway and earned Rs.7000/- to Rs.8000/- per month. P.W.3 has marked Ex.P.11, the revised VI Pay Commission order with effect from 01.01.2006. On the basis of the said documentary evidence, while the Tribunal fixed the age of the deceased at 33 years and determined the multiplier as 15, fixed the monthly income of the deceased at Rs.11,180/-, while added 50% towards future prospects, deducted 1/3rd towards the personal expenses of the deceased and arrived at the pecuniary loss to the family at

Rs.11,180/- per month. Accordingly, adopting the multiplier of 15, the pecuniary loss was assessed at Rs.20,12,400/-. Accordingly, the Tribunal passed the award granting compensation as below with interest at 7.5% per annum:-

Sl. No.	Head	Amount granted by the Tribunal
1	Loss of pecuniary benefits to the dependents of the deceased by adopting multiplier 15	Rs.20,12,400/-
2	Loss of consortium	Rs. 10,000/-
3	Loss of Estate	Rs. 10,000/-
4	Funeral Expenses	Rs. 5,000/-
	Total	Rs. 20,37,400/-

6. Insofar as the issue regarding negligence is concerned, the learned counsel for the appellant/Transport Corporation has no serious objection and hence, the same is confirmed.

7. The learned counsel for the claimants contended that as per the ratio laid down by the Supreme Court in the case of Sarla Verma & others Vs. Delhi Transport Corporation and Another reported in 2009 (2) TN MAC 1 (SC), the Tribunal ought to have deducted 1/4th towards the personal expenses of the deceased, but 1/3rd deduction has been erroneously made by the Tribunal. He further contended that no amount has been awarded by the Tribunal under the head "loss of love and affection" to the children of the deceased. He also stated that the amount of Rs.10,000/- awarded under the head "loss of consortium" is also very meagre.

8. On the other hand, learned counsel appearing for the appellant/Transport Corporation contended that without any deduction, the net pay of the deceased has been taken as income of the deceased and even as per Sarla Verma's case, where the deceased had a permanent job and was below 40 years, 30% addition alone was to be made in respect of future prospects. However, in the case on hand, the deceased being aged 33 years and working in Railways, the Tribunal adopted 50% addition towards future prospects without any deduction. Therefore, the learned counsel sought for interference with the award passed by the Tribunal. The further contention of the learned counsel for the appellant is that Rs.10,000/- awarded under the head "loss of estate" could not be sustained in view of the award already granted under the head "pecuniary loss to the dependents".

Rs.11,180/- - 1/4 th deduction	= Rs. 2,795/-
Rs.8385/- + 30% future prospects	
	= 8385 + 2515 = Rs.10,900/-
Rs.10,900 x 12 x 16	= Rs.20,92,896/-

10. Accordingly, the compensation awarded by the Tribunal stands modified as follows:

Sl. No.	Head	Amount granted by the Tribunal	Amount granted by this court
1	Loss of pecuniary benefits to the dependents of the deceased by adopting multiplier 16	Rs.20,12,400/-	Rs. 20,92,896/-
2	Loss of consortium	Rs. 10,000/-	Rs. 2,00,000/-
3	Loss of love and affection	----	Rs. 2,00,000/-
4	Transport and funeral expenses	Rs. 5,000/-	Rs. 15,000/-
5	Loss of estate	Rs. 10,000/-	----
	Total	Rs.20,37,400/-	Rs. 25,07,896/-

11. In the result, the Civil Miscellaneous Appeal is dismissed; Cross Objection No.22 of 2016 is partly allowed as follows:-

- (i) The award of the Tribunal is enhanced to Rs.25,07,896/- from Rs.20,37,400/-.
- (ii) The award amount will carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.
- (iii) This court by order dated 27.11.2014, directed the appellant/transport corporation to deposit the entire award amount granted by the Tribunal. In view of the same, the appellant is directed to deposit the balance amount as per the modified award granted by this Court along with accrued interest within three months from the date of receipt of a copy of this order.
- (iv) On such deposit, the 1st claimant/wife is entitled to withdraw Rs.8,00,000/- along with proportionate interest and costs, the 2nd, 3rd and 4th claimants are entitled to Rs.5,00,000/- each along with proportionate interest and costs, which amount shall be deposited in an interest bearing account in any one of the Nationalised Banks initially for a period of three years till they attain majority. The interest that accrues on the said amount shall be withdrawn by the 1st claimant/Mother for the upbringing of the minor claimants. The 5th claimant is entitled to withdraw Rs.2,07,896/- along with proportionate interest and costs by filing appropriate application before the Tribunal.
- (v) There will be no order as to costs in this appeal.
- (vi) Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

nvsri

To

1. The Motor Accidents Claims Tribunal,
Principal District Judge, Tiruvallur.

2. The Section Officer,
VR Section, High Court, Madras.

1 cc to Mr.S.Sairaman, Advocate, sr.26222

C.M.A.No.3284 of 2014
and Cross Obj.No.22 of 2016

pvr co
kra 28.06.2016