

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.04.2016

CORAM:

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

C.M.A.No.958 of 2014

&

C.M.P.No.1 of 2014

The Managing Director,
Tamil Nadu State Transportation Ltd.,
T.Mu.Dept. & Town, Railway Station Road,
Kumbakonam. Appellant/Respondent

Vs.

1.Rajalakshmi
2.Rajakumar
3.Manivannan
4.Valli
5.Saravanan
6.Sumathy
7.Amudha Respondents/Petitioner

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the order and decretal order dated 04.10.2012 made in M.C.O.P.No.193 of 2011 on the file of the Motor Accident Claims Tribunal (Subordinate Judge) at Mannarkudi.

For Appellant : Mr.D.Venkatachalam
For Respondents : Not ready for notice

J U D G M E N T

The Transport Corporation has come forward by filing this Civil Miscellaneous Appeal challenging the order and decretal order dated 04.10.2012 made in M.C.O.P. No.193 of 2011 on the file of Motor Accident Claims Tribunal, Subordinate Judge, Mannarkudi.

2. It is a case of fatal accident. On 20.02.2011 at about 20.15 hours, when the deceased Natarajan travelled as a passenger in the appellant bus bearing Reg.No.TN-49-N-1395, in Needamangalam Railway Gate near Periyar Statue, the driver of the bus drove the same in a rash and negligent manner, due to which, the said Natarajan was thrown out from the bus and was sustained grievous injuries. Immediately, he was taken to

Government Hospital, Needamangalam for first aid and thereafter, referred to Thanjavur Medical College Hospital, Thanjavur, where he was admitted as inpatient and after best treatment, he died in the hospital. The claimants who are the wife, 4 daughters and two sons approached the Tribunal, claiming compensation to the tune of Rs.6,00,000/-.

3. After analyzing the available oral and documentary evidence, the Tribunal awarded a sum of Rs.6,42,000/- as compensation, under the following heads:

Heads	Amount
Loss of dependency	Rs.2,34,000.00
Loss of consortium	Rs.1,00,000.00
Loss of Love and Affection	Rs.3,00,000.00
Transportation	Rs. 5,000.00
Funeral Expenses	Rs. 3,000.00
Total	Rs.6,42,000.00

4. Learned counsel appearing for the appellant/Transport Corporation would mainly contend that the quantum of compensation awarded by the Tribunal is too high. Further learned counsel for the appellant would submit that the Tribunal, without any proof of income of the deceased, has fixed a sum of Rs.4,500/- as monthly income and adopting multiplier '5', awarded compensation under the head 'pecuniary loss' at Rs.2,34,000/-, which is on the higher side and further awarded a sum of Rs.3,00,000/- towards loss of love and affection, which is also on the higher side. Hence, he prays for reduction of the compensation awarded by the Tribunal.

5. It is further contended by the learned counsel for the appellant that the FIR filed against the driver was closed as mistake of fact, for which, no proof has been furnished by the appellant and that the appellant has to establish that there was no negligence on the part of the driver of the bus. The Tribunal, as per the oral and documentary evidence filed by the Appellant that the FIR is closed as mistake of fact and even assuming that the FIR is closed as mistake of fact, it will not affect the proceedings of the Tribunal, as per the Division Bench judgment of this Court in the case of MANAGING DIRECTOR, TAMIL NADU STATE TRANSPORT CORPORATION V. S. YOBU & ANOTHER reported in CDJ 2013 MHC 2847, relevant portion of which is as follows:

"After investigation, the police referred his F.I.R. as 'Mistake of Fact. It is the conclusion/decision of the police. It cannot be substituted for the decision of the Tribunal. The Tribunal has to decide the question of negligence independently based on the evidence adduced before it. In doing so, it cannot try it like a complicated civil suit by a Civil Court or a criminal case in a Sessions Court. It must assess the evidence applying basic standards of proof. But, it need not follow the technical rules of evidence embodied in the Evidence Act."

6. A cursory glance of the award of the Tribunal would make it clear that the Tribunal taking note of the fact that the deceased, after the accident was taken to the Government Hospital at Needamangalam and thereafter admitted in Thanjavur Medical College Hospital, Thanjavur and he died on the same day at the age of 75 years, had arrived at the total compensation to be awarded to the claimants, who are stated to be the wife, daughters and sons of the deceased. The Tribunal rejecting the claimants' plea of the monthly income of the deceased at Rs.6,000/- fixed Rs.4,500/- as his monthly income and rightly adopted multiplier '5' and thereafter, deducted 1/7th towards personal expenses and awarded compensation at Rs.6,42,000/- under various heads. The point raised by the learned counsel for the appellant is that the monthly income has been erroneously taken up at Rs.4,500/-, even in the absence of proof of income, though the accident had taken place in 2011.

7. The Honourable Apex Court, in the judgment rendered in Syed Sadiq V. Divisional Manager, United India Insurance Co. Ltd reported in 2014 (1) TN MAC 459 (SC), in respect of a vegetable vendor, who sustained injuries in an accident which occurred in 2008, determined Rs.6500/- as the monthly income. Taking note of the Syed's case referred to above, since the accident in this case had occurred in the year 2011, in the absence of any proof, I am of the view that the Tribunal has not committed any error in taking the monthly income of the deceased as Rs.4,500/-. Further, a glance of the award would reveal that the Tribunal is right in granting the compensation under other head "loss of love and affection" because the sons and daughters have lost their father and therefore, the amount awarded under the head "loss of love and affection cannot be said to be excessive. Hence, I find no reason to interfere with the award of the Tribunal.

8. In the above circumstances, finding no merit, by confirming the award of the Tribunal, the Civil Miscellaneous Appeal is dismissed. The rate of interest granted by the Tribunal is also confirmed. The appellant Transport Corporation Company is directed to deposit the entire award

amount together with interest to the credit of MCOP No.193 of 2011 on the file of the Motor Accident Claims Tribunal (Subordinate Judge), Mannarkudi, 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 claimants are entitled to withdraw their respective shares as apportioned by the Tribunal on filing necessary applications before the Tribunal. There will be no order as to costs in this appeal. Connected miscellaneous petition is closed.

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-s/d-

Assistant Registrar (CS-VI)

True Copy

Sub-Assistant Registrar

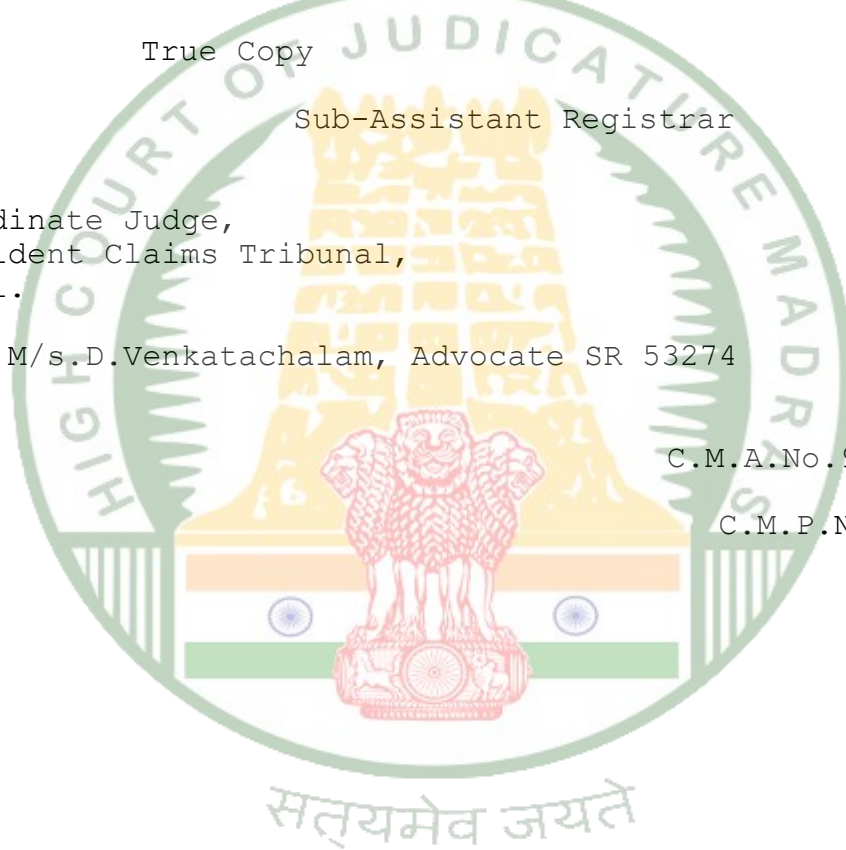
To

The Subordinate Judge,
Motor Accident Claims Tribunal,
Mannarkudi.

+ 1 cc to M/s.D.Venkatachalam, Advocate SR 53274

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