

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.04.2016

CORAM

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

C.M.A.No.3312 of 2013
and C.M.P.No.5517 of 2016

The Managing Director
Tamil Nadu State Transport
Corporation (Kumbakonam) Limited
Kumbakonam

...Appellant/
2nd Respondent

vs.

1.Deivamani
2.Minor.Sanjay Kousik
Minor Rep. By his next friend
and mother Deivamani
3.Ramasamy
4.Poovathal

..Respondents 1 to 4/
Petitioners

5.Dhanasekaran ..5th Respondent/ 1st Respondent
The 5th Respondent who is 1st respondent
in the main Claim petition was set exparte before the
tribunal. Hence Summons to them may be dispensing with.

Civil Miscellaneous Appeal filed under Section 173 of Motor
Vehicles Act, 1988 against the judgment and decree dated
28.03.2013 made in M.C.O.P.No.131 of 2011 on the file of Motor
Accidents Claims Tribunal, Additional District and Sessions Judge-
II, Tiruppur.

For Appellant/Transport Corporation : Mr.D.Venkatachalam

For Respondents 1 to 4/claimants : Mr.Ma.P.Thangavel

JUDGMENT

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

The Tamil Nadu State Transport Corporation has filed the
above appeal challenging the quantum of compensation awarded made
in M.C.O.P.No.131 of 2011, dated 28.03.2013 on the file of Motor
Accident Claims Tribunal, Additional District and Sessions Court-
II, Tiruppur.

2. It is a case of fatal accident. On 06.12.2010 at about 5.45 p.m., while the deceased/Parameswaran was starting his bike bearing Reg.No.TN 38-B-0238 standing at the extreme left of the road, the bus belonging to the appellant/Transport corporation, bearing Reg.No.TN 45-N-2491 driven in a rash and negligent matter, hit the deceased, as a result of which the deceased sustained grievous injuries and died on the same day. The claimants, who are wife, minor son, father and mother of the deceased have filed a claim for compensation in a sum of Rs.15,00,000/-. According to the claimants, the deceased was an Agriculturist and Power loom owner.

3. In support of the claim, the wife of the deceased was examined as P.W.1 and one Balachandar, who is an eye-witness to the accident, was examined as P.W.2 and Exhibits 1 to 9 were marked. On behalf of the Transport Corporation, neither any witness was examined nor any document was marked before the Tribunal.

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

5. Based on the oral and documentary evidence, the Tribunal fixed the income of the deceased at Rs.12,000/- per month and while deducting 1/3 towards his personal expenses, by adopting multiplier of 16, calculated the loss of pecuniary benefits to the dependents at Rs.17,28,000/-. [Rs.12,000/- x 12 - 1/3 x 16 = Rs.17,28,000/-] Accordingly, the Tribunal passed the award granting the 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 16	Rs.17,28,000/-
2	Loss of love and affection	Rs. 2,00,000/-
3	Loss of consortium	Rs. 50,000/-
4	Funeral expenses	Rs. 5,000/-
5	Medical expenses	Rs. 29,000/-
6	Pain and suffering	Rs. 50,000/-
	Total	Rs. 20,62,000/-

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. The learned counsel for the appellant/transport corporation raised a serious objection with regard to the grant of compensation towards Pain and Suffering, since it is a case of fatal accident. He also argued that in the absence of any documents produced by the claimants to substantiate the earnings of the deceased, the income of the deceased taken at Rs.12,000/- per month is excessive.

7. Resisting the contentions made on the side of the appellant, the learned counsel appearing for the claimants contended that the Tribunal has not taken into account the future prospects of the deceased while arriving at the pecuniary loss to the dependents. He also placed reliance on the decision of the Supreme Court in the case of Neeta W/o.Kallappa Kadolkar and others etc Vs. Divisional Manager, MSRTC, Kolhapur reported in 2015 (1) TN MAC 161 (SC), wherein, it is held that in the absence of documentary evidence in support of claim, Tribunal and High Court ought to have taken monthly salary of Rs.12,000/- as fixed by the State Government as Minimum Wages for Carpenters under Minimum Wages Act.

8. Having gone through the award passed by the Tribunal and the decision of the Apex Court in Neeta's case (supra) relied on by the learned counsel for the claimants, it is seen that in the present case, except for the production of document relating to Electricity connection obtained for the Power Loom run by the deceased, no cogent evidence was let in before the Tribunal to sustain the income earned by the deceased. However, as rightly pointed by the learned counsel for the claimants, the Tribunal has not taken into consideration the future prospects of the deceased while arriving at the pecuniary loss to the dependents. In the above backdrop, the non-grant of compensation under the head "Future Prospects" would offset the excess amount awarded under the head "Loss of Dependency" by fixing the income at Rs.12,000/-. Therefore, no interference is called for with the compensation granted under the head "Loss of Income".

Insofar as the compensation granted for "Pain and Suffering" this Court is of the considered view that since this is a case of fatal accident, there being no evidence to support the compensation awarded under the head "Pain and Suffering" the same is deleted. Insofar as the amounts awarded under the other heads are concerned, the same appears to be justified in all aspects.

9. 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 Dependency	Rs.17,28,000/-	Rs. 17,28,000/-
2	Loss of love and affection	Rs.2,00,000/-	Rs. 2,00,000/-
3	Loss of consortium	Rs.50,000/-	Rs. 50,000/-
4	Funeral expenses	Rs.5,000/-	Rs. 5,000/-
5	Medical expenses	Rs.29,000/-	Rs. 29,000/-
6	Pain and suffering	Rs.50,000/-	--
	Total	Rs.20,62,000/-	Rs.20,12,000/- rounded to Rs.20,00,000/-

10. The Civil Miscellaneous Appeal is partly allowed as follows:-

- (i) The award of the Tribunal is reduced to Rs.20,00,000/- from Rs.20,62,000/-.
- (ii) The award amount will carry interest at the rate of 7.5% per annum from the date of petition in M.C.O.P.No.131/2011 till the date of deposit.
- (iii) This Court by order dated 28.11.2013 directed the appellant/state transport corporation to deposit the entire award amount along with interest and entire costs. On the said deposit, the 1st claimant is permitted to withdraw Rs.12,00,000/-; claimants 3 and 4 are permitted to withdraw their share as apportioned by the Tribunal. Insofar as the 2nd claimant's share is concerned, the same shall be deposited in an interest bearing account in any one of the Nationalised Banks, till he attains majority.
- (v) The appellant/transport corporation is at liberty to withdraw the excess sum in deposit.
- (vi) There will be no order as to costs in this appeal.
- (vii) Consequently, connected miscellaneous petition is closed.

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Sd/-
Asst.Registrar (CS VII)

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Sub Asst. Registrar

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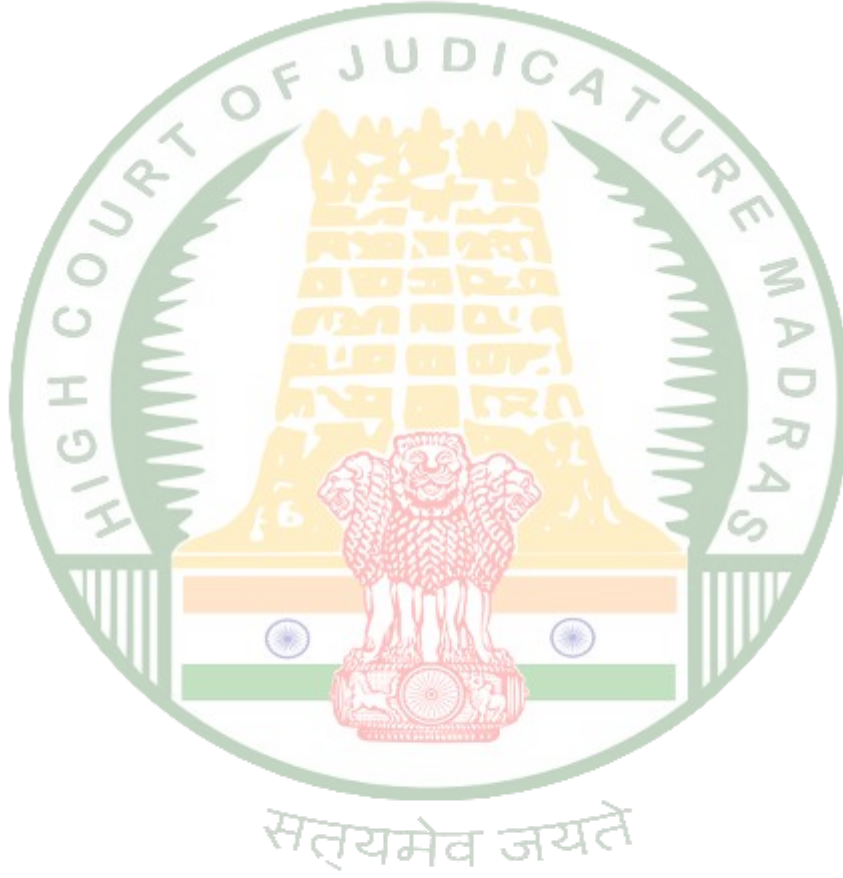
To

The Additional District and Sessions Judge-II,
The Motor Accidents Claims Tribunal,
Tiruppur.

1 cc to Mr.Ma.P. Thangavel, Advocate, Sr. 25157

C.M.A.No.3312 of 2013

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