

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.03.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUDHAKAR
and
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

C.M.A.No.3637 of 2013

The Managing Director
Tamil Nadu State Transport
Corporation, Trichirapalli ... Appellant/Respondent

vs.

1.Jaya Lakshmi
2.Minor Hari Krishnan
3.Five Months Foetus
Minor and Foetus represented
by their next friend and mother
Jaya Lakshmi

4.Pappa
5.Bala Krishnan
6.Sundrarajan
7.Manikandan ... Respondents/Petitioners

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 29.04.2013 made in M.C.O.P.No.77 of 2009 on the file of Motor Accidents claims Tribunal, Subordinate Judge, Ariyalur.

For Appellant : Mr.D.Venkatachalam

For Respondents: Mr.T.Gobinath for R1 to R7.

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JUDGMENT

(Judgment of the Court was delivered by S.VAIDYANATHAN,J.)

The Tamil Nadu State Transport Corporation is on appeal challenging the award dated 29.04.2013 passed in M.C.O.P.No.77 of 2009 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge), Ariyalur.

2. It is a case of fatal accident. On 09.11.2008, at 2.35 pm., when the deceased Sivakumar, aged 33 years was riding a Motor cycle bearing Registration No.TN 46 H 3938 with a Pillion rider viz., Baskaran from Jeyamkondam to Sendurai Road, at Sengunthapuram, the driver of the appellant/State Transport Corporation Bus drove his Town Bus bearing Registration No.TN-45-N-1550 in a rash and negligent manner and hit the deceased, as a result, Sivakumar sustained fatal injuries and died on the same day. The claimants, who are wife, 1 year old son, five months foetus, mother, father and two brothers have filed a claim for compensation for a sum of Rs.30,00,000/-. According to the claimants, the deceased studied Civil Engineering and worked as Iron rod fitter in a Singapore Construction Unit and earned Rs.60,000/- per month for the past 7 years and came to his native village for vacation on June 16th, 2008 and if he would have been alive, would return to Singapore and earn good income.

3. In support of the claim, the wife of the deceased was examined as P.W.1; one Veerasamy, said to have witnessed the accident was examined as P.W.2 and Baskaran, who travelled as Pillion Rider with the deceased was examined as P.W.3 and Balakrishnan, father of the deceased was examined as P.W.4. Exhibits P-1 to P-21 were marked, the details of which are as follows:-

Ex.No.	Details
P1	Copy of FIR in Cr.No.696/2008
P2	Post Mortem Certificate
P3	Charge Sheet
P4	Mahazar
P5	Registration Certificate of vehicle bearing Reg.No.TN-45-N-1550.
P6	Registration Certificate of vehicle bearing Reg.No.46-H-3938
P7	Scene of occurrent chart
P8	Driving License
P9	Registration Certificate Book of two-wheeler
P10	National Apprenticeship Certificate
P11	Provisional National Trade Certificate
P12	Copy of Passport
P13	Copy of Passport
P14	B.H.E.L.Certificate

Ex.No.	Details
P15	S.O.C. Construction Certificate
P16	S.O.C. Construction certificate
P17	Pass Book showing statement of Bank Account in Singapore Bank.
P18	Xerox copy of ATM Card of Singapore Bank
P19	Work Permit Card
P20	Certificate showing the work performed by the deceased
P21	Photocopy of the vehicle which caused the accident

On behalf of the Insurance Company, R.W.1/Venkatesan was examined and no exhibit was marked before the Tribunal.

4. The Tribunal based on the oral evidence of the witnesses, the F.I.R. Registered in Crime No.696/2008 under Sections 279, 337 and 304(A) of IPC, and also taking note of the fact that the deceased was having valid driving licence to drive the two wheeler came to the conclusion that the driver of the appellant/Transport Corporation Bus was rash and negligent and was responsible for the accident and consequently liability was fixed on the appellant/Transport Corporation, to compensate the claimants. On this issue, learned counsel for the appellant has no serious objection with regard to the finding of the Tribunal as no material has been placed to come to a different conclusion from that of the conclusion arrived by the Tribunal.

5. Based on the oral and documentary evidence, the Tribunal granted the following amounts as compensation 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 17	Rs.16,32,000/-
2	Loss of consortium	Rs. 1,20,000/-
3	Loss of love and affection	Rs. 1,80,000/-
4	Funeral expenses	Rs. 20,000/-
	Total	Rs. 19,52,000/-

6. The Tribunal, by relying on the Exhibits filed on the side of the claimants in support of the employment of the

deceased, fixed the monthly income of the deceased at Rs.12,000/- per month and deducted Rs.4,000/- towards his personal expenses and taken Rs.8,000/- as contribution to his dependents. Further, by adopting 17 multiplier, calculated the pecuniary loss at Rs.16,32,000/-. [17 x 12 x Rs.8,000/-].

7. The only serious objection raised is with regard to the grant of compensation towards Loss of income, since the Tribunal fixed the pecuniary loss by adopting 17 multiplier instead of proper multiplier of 16 and taking monthly income as Rs.12,000/- per month, which is too excessive.

8. Insofar as the compensation towards pecuniary loss is concerned, now, this court, by following the decision of the Honourable Apex court, in the case of Syed Sadiq Vs. Deputy Manager, United India Insurance Company reported in 2014(1) TNMAC 459, fix the monthly income of the deceased at Rs.6,500/- and by deducting 1/4th from the said monthly salary, as the dependents are 5 in number, the pecuniary loss is calculated as under:-

Rs.6,500/- + 50% x 12 x 16 - $\frac{1}{4}$ = Rs.14,04,000/-. This court, while modifying the loss of income to the dependents, also inclined to modify the award granted under other heads. 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.	Rs.16,32,000/-	Rs.14,04,000/-
2	Loss of consortium	Rs. 1,20,000/-	Rs. 1,00,000/-
3	Loss of Estate	--	Rs. 1,00,000/-
4	Loss of love and affection	Rs. 1,80,000/-	Rs. 2,00,000/-
5	Funeral expenses	Rs. 20,000/-	Rs. 25,000/-
6	Transportation	--	Rs. 20,000/-
	Total	Rs.19,52,000/-	Rs.18,49,000/-

9. The interest granted at 7.5% per annum by the Tribunal is confirmed.

10. Accordingly, the Civil Miscellaneous Appeal is partly allowed as follows:-

(i) The award of the Tribunal is reduced to Rs.18,49,000/- from Rs.19,52,000/-.

(ii) The interest granted by the Tribunal at 7.5% per annum is confirmed.

(iii) The award amount is apportioned as follows:-

1st claimant is entitled to Rs.10,50,000/-; 2nd minor claimant is entitled to Rs.4,00,000/-; 3rd claimant is entitled to Rs.2,00,000/-; 4th claimant is entitled to Rs.75,000/-; 5th claimant is entitled to Rs.75,000/-; 6th claimant is entitled Rs.24,500/- and 7th claimant is entitled to Rs.24,500/-.

(iv) This Court by order dated 08.01.2014 directed the appellant/Transport Corporation to deposit the entire award amount along with accrued interest and costs. Thereafter, in M.P.No.1 of 2014, by order dated 29.04.2014, granted four weeks time to comply with order dated 08.01.2014. Hence, the appellant/transport corporation is directed to deposit the modified award amount, if not already deposited.

(v) The claimants are permitted to withdraw the modified award amount as apportioned by this Court. As far as the minors' share is concerned, the same may be deposited in any one of the Nationalised Banks and the interest may be utilised for their education. On their attaining majority, they are permitted to withdraw their share on filing appropriate application.

(vi) The appellant/Transport Corporation is at liberty to withdraw the excess amount, if any deposited before the Tribunal.

(vii) There will be no order as to costs in this appeal.

(viii) Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

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Sub Assistant Registrar

To

1.The Subordinate Judge, Ariyalur
(The Motor Accident Claims Tribunal).

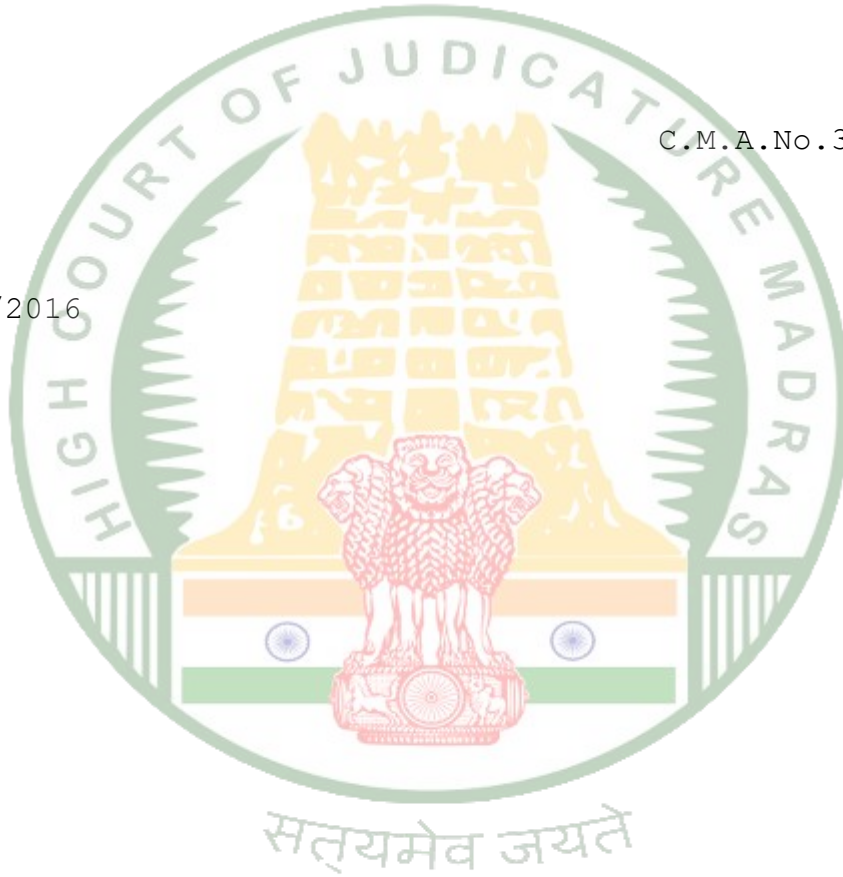
2.The Section Officer,
VR Section, High Court, Madras.

+2cc to Mr.D.Venkatachalam, Advocate Sr.20093,15596

+2cc to Mr.T.Gobinath, Advocate Sr.20708,16107

C.M.A.No.3637 of 2013

gj[col]
srg 06/06/2016



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