



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.03.2016

CORAM:

WEB COPY

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.(MD)No.164 of 2016
and
C.M.P.(MD).No.2576 of 2016

The General Manager,
Tamil Nadu State Transport Corporation,
Kumbakonam.

... Appellant

Vs.

1. Revathi,
2. Minor Mugesh
3. Minor Soumiya
4. Minor Ramachandran
5. Pushpavalli
(Minors 2 to 4 are represented by their
guardian and mother the 1st respondent Revathi)

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree made in M.C.O.P.No.413 of 2011 dated 03.12.2013 on the file of the Motor Accident Claims Tribunal / Special District Court, Thanjavur.

For Appellant : Mr.P.Prabhakaran

JUDGMENT

The Civil Miscellaneous Appeal is filed against the judgment and decree made in M.C.O.P.No.413 of 2011 dated 03.12.2013 on the file of the Motor Accident Claims Tribunal / Special District Court, Thanjavur.

2. The appellant is the respondent in M.C.O.P.No.413 of 2011. The respondents filed a claim petition, claiming a sum of Rs.20 lakhs as compensation for the death of one Baskar, who is the husband of the first respondent, father of the respondents 2 to 4 and son of the fifth respondent. According to the respondents, the accident took place only due to rash and negligent driving by the driver of the bus belonging to the appellant Corporation. The appellant filed a counter denying that the accident took place due

to the negligence of the driver of the appellant bus. On the other hand, the appellant stated that the deceased came to the extreme right side of the road and dashed against the bus and therefore, they are not liable to pay any compensation. Before the Tribunal, on behalf of the respondents, the first respondent was examined as P.W.1, Janarthanan was examined as P.W.2 and one Balakrishnan was examined as P.W.2 and marked 7 documents as Exs.A1 to A7. The appellant examined his driver as R.W.1 and did not mark any documents. The Tribunal, considering the pleadings evidence of P.W.2/eye witness and First Information Report, held that the accident took place only due to rash and negligent driving of the driver of the appellant. Considering the age of the deceased and nature of the work of the deceased, the Tribunal awarded the following amounts as compensation.

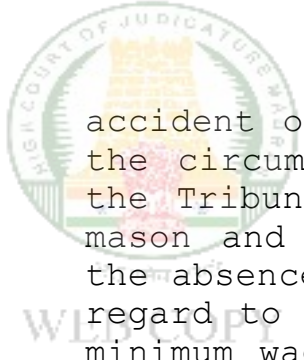
Sl.No	Heads	Calculation
1.	Salary	Rs.6,000/- per month
2.	1/3 rd of (1) deducted as personal expenses of the deceased	Rs.6000-2000=Rs.4,000 per month
3.	Compensation after multiplier of 13 is applied	Rs.4,000/-x12x13 = Rs.6,24,000/-
4.	Loss of consortium for 1 st petitioner	Rs.15,000/-
5.	Loss of love and affection for 2 to 4 petitioners each Rs.15,000/-	Rs.45,000/-
6.	Loss of love and affection for 5 th petitioner	Rs.10,000/-
7.	Medical bill as per Ex.P5	Rs.24,960/-
8.	Funeral Expenses	Rs.5,000/-
	Total compensation awarded	Rs.7,23,960/-

Against the said order, the present Civil Miscellaneous Appeal is filed.

3. The learned counsel for the appellant contended that the learned Judge failed to take note the accident took place only due to the fault of the deceased. The learned Judge erred in not accepting the evidence of driver of the appellant. The learned Judge erred in fastening the entire liability on the driver of the appellant and the amount awarded is excessive.

4. Heard the learned counsel for the appellant and perused the materials available on record.

5. The respondents have examined eye-witness P.W.2 and marked Ex.A1, First Information Report. The evidence of the eye witness/P.W.2 and First Information Report clearly shows that accident occurred only due to rash and negligent driving of the driver of the bus. The appellant, apart from examining the driver, did not examine any other witness or file documents to show that



accident occurred only due to the negligence of the deceased. In the circumstances, there is no reason to set aside the order of the Tribunal. The respondents have proved that the deceased is a mason and Member of Tamil Nadu Builders Welfare Association. In the absence of any evidence being produced by the respondents with regard to the income of the deceased, the Tribunal has taken the minimum wages fixed by the Court with regard to mason and arrived at compensation for loss of income by taking into account the age of the deceased from the postmortem report and applied multiplier method from the judgment of the Honourable Supreme Court in **Smt. Sarala Varma and other vs. Delhi Transport Corporation and another** reported in **2009(2) TNMAC 1 (SC)** and **Santhose Devi v. National Insurance Company Limited and others** reported in **2012 (2) TNMAC 1 (SC)**. The compensation awarded by the Tribunal is just compensation and is as per law.

6. For the reasons, the Civil Miscellaneous Appeal is dismissed. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

To

The Motor Accident Claims Tribunal /
Special District Court,
Thanjavur.

+ 1 CC TO M/S.P.PRABHAKARAN, ADVOCATE IN SR NO. 14676

AKV
TE/DB/SAR-III : 02/06/2016 : 3P/3C

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