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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.03.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

and

THE HON'BLE MR.JUSTICE C.T. SELVAM

C.M.A.(MD)No.179 of 2016

and

CMP(MD)No.2647 of 2016

The Managing Director,
Tamil Nadu State Transport Corporation,
Madurai Division 2,
Door No.2, Trivandrum Road,
Vannerpettai
Tirunelveli - 627 003.

... Appellant

Vs.

1.Sudhalakshmi

2.Minor Harris Mahalingam

3.Mahalingam

4.Muthammal

... Respondents

*(R2 represented by mother and
guardian the 1st respondent)

PRAYER: The Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicle Act, against the judgment and decree made in M.C.O.P.No.1408/2010, dated 11.09.2012 on the file of the Motor Accident Claims Tribunal / II nd Additional District Court, Tirunelveli.

For Appellant : Mr.P.Prabhakaran

For Respondents: No Appearance

JUDGMENT

(Judgment of this Court was made by S.MANIKUMAR, J.)

Challenge in this appeal is to the finding of the Motor Accident Claims Tribunal, (II Additional District Judge), Tirunelveli, fixing negligence on the driver of appellant transport Corporation bus, bearing Reg.No.TN-72-N-1279 and the quantum of compensation of Rs.21,40,000/- with interest, at the rate of Rs.7.5% per annum.



2. Short facts leading to the appeal are that on 06.10.2010, at about 4.00 p.m., when Meenakshi Sundaram was riding a motorcycle, bearing Reg.No.TN-74-H-7913, on Parakkai Road Junction to Edalakudi Main Road, opposite to Kottar Devasahayam Saw Mill, a bus belonging to the appellant transport Corporation, bearing Reg.No.TN-72-N-1279, which came in the opposite direction, driven in a rash and negligent manner, by the driver, dashed against the motorcyclist Meenakshi Sundaram and he died on the spot.

3. A case in Crime No.99 of 2010, for an offence under Section 304(A) of IPC., has been registered against the driver of the transport Corporation bus.

4. Legal representatives of the deceased viz., wife, minor son, then aged about 8 years, parents aged about 70 and 60 respectively, filed MCOP.No.1408 of 2010, on the file of Motor Accidents Claims Tribunal, learned II Additional District Judge, Tirunelveli, claiming compensation of Rs.25,00,000/-.

5. Opposing the claim petition, transport Corporation has denied the negligence. According to them, the bus was driven, by observing all the traffic rules. Near Kottar Devasahayam Saw Mill, the deceased was riding the motor cycle in a rash and negligent manner and attempted to overtake a tempo and on seeing the motorcycle, coming in the opposite direction, driver of the bus turned the bus on the left side of the road, applied the break and stopped the bus. Despite the same, the motorcyclist dashed against the right side of the body of the bus, and thus invited the accident. Describing the incident, the appellant transport Corporation has denied negligence and without prejudice, disputed the age of the deceased, avocation, income and compensation claimed under various heads.

6. Before the Claims Tribunal, on the side of the respondents / claimants P.Ws.1 and 2 have been examined and Exs.P1 to P9 have been marked. On the side of the appellant one C.Paul Moses has been examined, as R.W1 and no documentary evidence has been marked.

7. On evaluation of pleadings and evidence, the Claims Tribunal held that the driver of the bus, bearing Reg.No.TN-72-N-1279, had caused the accident and consequently, fixed liability on the appellant transport Corporation. The Tribunal has quantified the compensation as Rs.21,40,000/- with interest, at the rate of 7.5% per annum. and apportioned the same as



hereunder:-

S.NO	DESCRIPTION	AMOUNT IN (RS) .
1	Loss of Income	20,25,000
2.	Funeral Expenses	10,000
3.	Transportation and Loss of Articles	5,000
4.	Loss of love and affection	50,000
5	Loss of Consortium	50,000
	TOTAL	21,40,000

8. Though Mr.P.Prabhakaran, learned standing counsel appearing for the appellant transport Corporation, has assailed the correctness of the findings of the Tribunal, on negligence, contending that the entire negligence ought to have been fixed on the motorcyclist, who, while attempting to overtake a tempo, dashed against the bus and further contended that the Claims Tribunal has failed to give credence to the oral testimony of R.W.1, driver of the bus, this Court is not inclined to accept the same, for the reason that P.W.1, wife, has adduced evidence. Though she has not witnessed the accident, P.W.2, Motor Vehicle Inspector, has supported her testimony. Corroborating her contention, Exs.P1; First Information Report; Ex.P2, the report of the Motor Vehicle Inspector; Ex.P3 rough sketch and Ex.P4, charge sheet have been filed. On the contra, oral testimony of R.W.1 is neither supported nor corroborated. Analysing the oral and documentary evidence adduced, the Claims Tribunal has found that R.W.1, driver of the bus, was negligent in causing the accident. It is relevant to refer few decision on the aspect of preponderance of probability:-

"(i) In **N.K.V.Brother's Private Limited v. Kurmai** reported in **AIR 1980 SC 1354**, while dealing with the scope of the enquiry in the Claims Tribunal, the Apex Court has held that,

"Accident Claims Tribunal, must take special care to see that innocent victims do not suffer and drivers and owners do not escape liability merely because of some doubt here or some obscurity there. Save in plaint cases, culpability must be inferred from the circumstances where it is fairly reasonable. The Court should not succumb to niceties, technicalities and mystic maybes. We are emphasising this aspect because we are often distressed by transport operators getting away with it thanks to judicial laxity, despite the fact that they do not exercise sufficient disciplinary control over the drivers in the matter of careful driving."



(ii) In a decision in *Union of India v. Saraswathi Debnath* reported in **1995 ACJ 980**, High Court of Gauhati has held in Paragraph 6 as follows:

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"The law is well settled that in a claim under the Motor Vehicles Act, the evidence should not be scrutinised in a manner as is done in a civil suit or a criminal case. In a civil case the rule is preponderance of probability and in a criminal case the rule is proof beyond reasonable doubt. It is not necessary to consider these niceties in a matter of accident claim case inasmuch as it is summary enquiry. If there is some evidence to arrive at the finding that itself is sufficient. No nicety, doubt or suspicion should weigh with the Claims Tribunal in deciding a motor accident claim case."

(iii) In *Bimla Devi & Ors. Vs. Himachal RTC* reported in **2009 (13) SCC 530**, the Supreme Court held as follows:

"It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied. For the said purpose, the High Court should have taken into consideration the respective stories set forth by both the parties."

9. It is the well settled law that proceedings before the Claims Tribunal are summary in nature and it is suffice to consider, whether there is any preponderance of probability, as to the manner of accident, as detailed in the claim petition. Strict proof of evidence is not required. In the absence of any rebuttal evidence, the finding of the Tribunal regarding negligence cannot be termed as perverse or it is not a case of no evidence.

10. In the light of the above discussion and decisions, this Court is of the view that there is no manifest illegality in the findings recorded by the Claims Tribunal, on the aspect of negligence.

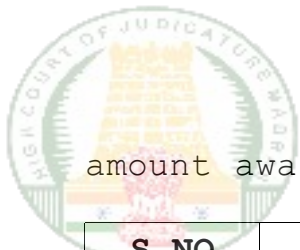


11. On the aspect of the quantum of compensation, P.W.1/ wife has deposed that prior to death, the deceased was working as a Panchayat contractor. He had earned Rs.25,000/- per month. To support avocation and income, she has marked Exs.P8 Income Tax receipts and Ex.P9, copies of contract forms. However, as the above said documents have not been marked, through competent authorities, the Tribunal had not taken into account the details and the amount mentioned in Exs.P8 and P9, respectively. But, the Tribunal has accepted the avocation. Taking note of the economic factors and by observing that, at the time of accident, even a labour would have earned Rs.150/- per day and having regard to the avocation fixed Rs.15,000/- as the monthly income. Age of the deceased, as 41, has been determined on the basis of Ex.P5, Postmortem Certificate, which cannot be found fault with in view of the judgments in **Fakeerappa v. Karnataka Cement Pipe Factory [2004 (4) LW 20]** and **The Managing Director, Tamilnadu State Transport Corporation, Madurai v. Mary [2005 (5) CTC 515]**. Thus the Tribunal has determined the monthly income of the deceased as Rs.15,000/- and applying the decision of the Hon'ble Supreme Court in **Smt.Sarla Verma & Ors. v. Delhi Transport Corporation and another** reported in **2009 (2) TNMAC 1 (SC)** the Claims Tribunal has computed the annual loss of contribution to the family, as Rs.1,80,000/- per year. Claimants were four in number. Deducting $1/4^{th}$ towards the personal living expenses of the deceased, the Tribunal has computed the annual loss of contribution, as Rs.1,35,000/-.

12. As the number of dependants was only four, the Tribunal has made a mistake in deducting $1/4^{th}$. If $1/3^{rd}$ is deducted, the annual loss of contribution works out to Rs.1,20,000/-. If '15' multiplier is applied, the quantum of compensation works out to Rs.1,20,000 x 15 = 18,00,000/-. Thus the difference amount to be deducted under the head, 'loss of income' is Rs.2,25,000/-.

13. Going through the award, it could be deduced that the Claims Tribunal has awarded a sum of Rs.50,000/-, under the head, 'Loss of consortium'; Rs.50,000/- under the head, 'Loss of love and affection; Rs.10,000/- under the head, 'Funeral expenses' and Rs.5,000/- under the head, 'Loss of damage to articles.

14. From the award, it could be deduced that reduction in the quantum of compensation towards loss of contribution to the family as Rs.2,25,000/-, excessively computed can be adjusted against the compensation of award against loss of consortium; loss of love and affection and funeral expenses. Accordingly, the



amount awarded by the Claims Tribunal is modified as follows:-

S.NO	DESCRIPTION	AMOUNT IN (RS) .
1	Loss of Income	18,00,000
2.	Funeral Expenses	25,000
3.	Transportation and Loss of Articles	15,000
4.	Loss of love and affection	1,50,000
5	Loss of Consortium	1,50,000
	TOTAL	21,40,000

15. In the light of the above discussion and decisions, and going through the materials on record in entirety, this Court is of the view that there is no valid ground to interfere with the Award.

16. In the result, the Civil Miscellaneous Appeal is dismissed by confirming the total compensation awarded. No costs. Consequently, connected miscellaneous petition is also dismissed.

17. The appellant transport Corporation is directed to deposit the entire award amount, with accrued interest and costs, to the credit of M.C.O.P.No.1408/2010, on the file of the Motor Accident Claims Tribunal / II nd Additional District Court, Tirunelveli, less the statutory deposit already made, within six weeks from the date of receipt of a copy of this order.

18. On such deposit being made, the respondents / major claimants 1, 3 and 4 namely, the wife and parents of the deceased, are permitted to withdraw their respective shares, with proportionate interest and costs.

19. The shares of the minor claimant / respondent No.2 shall be deposited in an interest bearing account, in any one of the nationalized bank, proximate to the residence of the 1st respondent. Mother of minor claimant / 1st respondent, is permitted to withdraw the interest accrued, once in three months for the welfare of the minor claimant, till he attain majority.

Sd/

Assistant Registrar(CS-I)

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To

1. THE MOTOR ACCIDENT CLAIMS TRIBUNAL
II ND ADDITI+ONAL DISTRICT COURT,
TIRUNELVELI.

2 SUDHALAKSHMI
W/O. LATE. MEENAKSHI SUNDARAM,
D.NO.15/150, KARKADU ROAD, SUCHINDRUM,
AGASTEESWARAM TALUK, KANYAKUMARI DISTRICT-629 704.

3 MINOR HARRIS MAHALINGAM
S/O. LATE. MEENAKSHI SUNDARAM,
D.NO.15/150, KARKADU ROAD, SUCHINDRUM,
AGASTEESWARAM TALUKK, KANYAKUMARI DISTRICT--629 704.

4 MAHALINGAM
S/O. LATE. MEENAKSHI SUNDARAM,
D.NO.15/150, KARKADU ROAD, SUCHINDRUM,
AGASTEESWARAM TALUK, KANYAKUMARI DISTRICT-629 704.

5 MUTHAMMAL
W/O.MAHALINGAM, D.NO.15/150, KARKADU ROAD,
SUCHINDRUM, AGASTEESWARAM TALUK, KANYAKUMARI DISTRICT-629 704.

+1c to Mr.P.Prabhakaran, Advocate SR.No.14364

C.M.A. (MD) No.179 of 2016
and

CMP (MD) No.2647 of 2016
14.03.2016

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PA/AAL-MPA/SAR II/06.06.2016/7P/7C