



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.09.2016

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. (MD) No.1013 of 2013
& M.P. (MD) No.2 of 2013

The General Manager,
Tamil Nadu State Transport Corporation,
Vannarapettai,
Tirunelveli.

... Appellant/1st Respondent

Vs.

1.Dhanalakshmi, W/o. Late Sankara Subramonian
2.Minor Esai Priya, D/o. Late Sankara Subramonian
3.Minor Esaivani, D/o. Late Sankara Subramonian
(Minor Respondents 2 and 3 are
represented by guardian and mother
the first respondent)

4.Muthammal, W/o.Mookka Thevar
5.Mookka Thevar,
S/o.Subbiah Thevar .. Respondents 1 to 5/Petitioners 1 to 5
6.Anandraj, S/o.Arunachalam .. 6th Respondent/2nd Respondent

Prayer:- Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 28.03.2012 passed in M.C.O.P.No.17 of 2009 on the file of the Motor Accidents Claims Tribunal/Sub-Court, Ambasamudram.

For Appellant ... Mr.P.Prabhakaran
For R1 to R5 ... Mr.R.Murugappan

* * * * *

JUDGMENT

(Judgment of the Court was made by V.M.VELUMANI, J.)

This Civil Miscellaneous Appeal has been filed against the judgment and decree dated 28.03.2012 passed in M.C.O.P.No.17 of 2009 on the file of the Motor Accidents Claims Tribunal/Sub-Court, Ambasamudram.

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The facts in brief leading to the filing of this Civil Miscellaneous Appeal, are as follows:



(i) The appellant is the first respondent and the respondents 1 to 5 are the claimants and the sixth respondent/driver of the appellant Transport Corporation bus is the second respondent in M.C.O.P.No.17 of 2009 on the file of the Court of Motor Accident Claims Tribunal (Sub-Court), Ambasamudram. The respondents 1 to 5 filed a claim petition in M.C.O.P.No.17 of 2009 against the appellant and the sixth respondent, claiming a sum of Rs.95,67,160/- as compensation.

(ii) According to the respondents 1 to 5/claimants, one Sankara Subramonian, husband of the first respondent, father of the respondents 2 and 3 and son of the respondents 4 and 5, was driving his motorcycle, bearing Registration No.TN-72-L-5153 from Kotarankulam to Mannarkovil at 9 p.m. At that time, the sixth respondent, who is the driver of the appellant Transport Corporation, drove the bus belonging to the appellant in a rash and negligent manner and dashed against the motorcycle driven by the said Sankara Subramonian. Due to the accident, the said Sankara Subramonian sustained multiple injuries. After giving first-aid in Government Hospital, Ambasamudram, he was taken to Government Medical College Hospital, Tirunelveli. On the way to hospital, he died.

(iii) The deceased Sankara Subramonian was working as A/c Mechanic in Singapore and was earning 283 Singapore Dollars per week. The respondents 1 to 5 are the dependants on the deceased. The driver of the appellant is responsible for the accident and therefore, a complaint was lodged against the sixth respondent/driver of the bus belonging to the appellant.

(iv) At the time of accident, the deceased was aged about 42 years and therefore, the respondents filed a claim petition claiming a sum of Rs.95,67,160/-.

(iv) The appellant filed counter statement and denied their liability to pay compensation. The appellant has stated that the accident did not take place due to rash and negligent driving by the sixth respondent. At the time of accident, the deceased was in a drunken mood and was riding his motorcycle in a zig-zag manner and dashed against the bus and fell on the platform and subsequently, he died. The accident occurred due to negligence of the deceased. The deceased did not work as A/c Mechanic in Singapore and he was only a Coolie.

(v) Based on the pleadings, the Tribunal framed necessary points for consideration.

(vii) Before the Tribunal, the first respondent herself examined as P.W.1 and one Mariappan, eyewitness was examined as P.W.2 and one Ganeshkumar and Venkatakrishnan were examined as P.Ws.3 and 4 and 17 documents were marked as Exs.P.1 to P.17. On behalf of the appellant, the sixth respondent was examined as R.W.1 and a copy of the judgment made in C.C.No.73 of 2009 was marked as Ex.R.1.

<https://hcservices.ecmcs.gov.in/cases/>

(vi) The Tribunal considering the pleadings, oral and documentary evidence, came to the conclusion that the accident

took place only due to rash and negligent driving by the sixth respondent/driver of the bus belonging to the appellant. The Tribunal considering Exs.P.8 and P.10, awarded a sum of Rs.18,60,000/- as compensation with interest at the rate of 7.5% p.a., from the date of claim petition till realization under the following heads.

Sl.No	Heads	Amount
1	Loss of consortium and Loss of love and affection to the first respondent	15,000
2	Loss of love and affection to the respondents 1, 3, 4 and 5 (each Rs.10,000/-)	40,000
3	Loss of income	18,00,000
4	Funeral expenses	5,000
	Total	18,60,000

3. Aggrieved by the said award, the appellant Transport Corporation has come out with the present appeal.

4. The learned counsel for the appellant submitted that the Tribunal erred in fixing the entire negligence on the part of the sixth respondent. The Tribunal failed to consider the fact that the deceased was in a drunken mood at the time of accident and the accident had occurred only due to his negligence. The respondents 1 to 5 have not proved the income of the deceased. The learned Sub-Judge, failed to consider Ex.R.1/Ex.P.11, whereby, the sixth respondent was acquitted. The learned counsel for the appellant further submitted that the quantum of compensation and rate of interest awarded are excessive and prayed for allowing the civil miscellaneous appeal.

5. Per contra, the learned counsel for the respondents 1 to 5 submitted that the Tribunal having held that the deceased was earning Rs.30,000/- per month, erred in fixing the monthly contribution of the deceased at Rs.10,000/-. The Tribunal ought to have deducted only 1/4, as there are five persons are dependants of the deceased. The amount awarded towards loss of consortium and loss of love and affection are too meager. Therefore, the learned counsel for the respondents 1 to 5 prayed for enhancement of compensation by invoking Order 41 Rule 33 C.P.C., even though the respondents 1 to 5/claimants have not filed any appeal or cross-objection.

6. We have carefully perused all the materials available on record and considered the arguments advanced by the learned counsel appearing for the parties.

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7. The points for consideration in this civil miscellaneous appeal are,



(i) Whether the accident took place due to rash and negligent driving by the sixth respondent or due to negligence of the deceased?

(ii) Whether the compensation awarded is excessive or whether the respondents 1 to 5 are entitled to enhancement of compensation?

Point No.(i):

8. The learned counsel for the appellant submitted that the sixth respondent was acquitted in the criminal case and that shows the accident did not take place due to rash and negligent driving by the sixth respondent. This contention is untenable. The Tribunal is not bound by the judgment rendered in the criminal case, but can consider the same for coming to the conclusion whether the accident had taken place due to rash and negligent driving by the sixth respondent. In the present case, the sixth respondent was acquitted by giving benefit of doubt. The sixth respondent did not give any complaint against the deceased alleging negligence on the part of the deceased. Further, the appellant alleged that the deceased was in a drunken mood at the time of accident, but did not prove the same by letting in any oral and documentary evidence. On the other hand, in the Postmortem report, marked as Ex.P.4, there is no mention that the deceased was under the influence of Alcohol. The Tribunal has given valid and cogent reason for coming to the conclusion that the accident took place only due to rash and negligent driving by the sixth respondent. Therefore, there is no reason to interfere with the said finding. Point No.(i) is answered accordingly.

Point No.(ii):

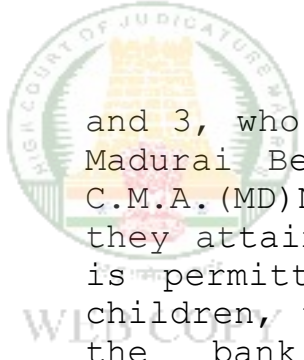
9. The Tribunal based on the oral and documentary evidence, came to the conclusion that the deceased was earning a sum of Rs.30,000/- in Singapore. The appellant has stated that the deceased was a Coolie and was not A/c Mechanic in Singapore. The appellant has not proved the same. On the other hand, the respondents 1 to 5 by marking Exs.P.8, P.9, P.10 and P.16, proved that the deceased was working in Singapore as A/c Mechanic and was earning Rs.30,000/- per month. The finding of the Tribunal that the deceased was earning Rs.30,000/- per month is confirmed. The contention of the learned counsel for the respondents 1 to 5 that the Tribunal erred in deducting a sum of Rs.20,000/- towards personal expenses from the income of the deceased, but ought to have deducted only 1/4th for calculating the loss of income, has considerable force. In view of well settled judicial pronouncements, this is a fit case to invoke Order 41 Rule 33 C.P.C. to enhance the compensation, even though the respondents 1 to 5 have not filed any appeal or cross objection. Therefore, considering the facts and circumstances of the case, 1/4th of the salary is liable to be deducted, which comes to Rs.7,500/- [Rs.30,000 / 4]. Considering the fact that the deceased was working in Singapore, a further sum of Rs.10,000/- is deducted from his salary for his expenses and monthly contribution

of the deceased to his family is fixed at Rs.12,500/- [Rs.30,000 - Rs.17,500]. As per Exs.P.1 and P.4, the deceased was aged about 40 years at the time of accident. The Tribunal applied multiplier '15'. As per the judgment of the Hon'ble Apex Court reported in 2009 (6) SCC 121 [Sarla Verma (Smt.) and Others Vs. Delhi Transport Corporation and Another], the correct multiplier for the age group of persons between 36 and 40 years is 15. By applying multiplier '15', the respondents 1 to 5 are entitled to Rs.22,50,000/- [Rs.12,500 x 12 x 15] towards loss of income. The Tribunal has awarded a sum of Rs.15,000/- to the first respondent towards loss of consortium and Rs.40,000/- to the respondents 1, 3, 4 and 5 towards loss of love and affection. These amounts are very meager. Therefore, the same is modified to Rs.50,000/- to the first respondent towards loss of consortium and a total sum of Rs.1,00,000/- to the respondents 2 to 5 towards loss of love and affection. In all other aspects, the award of the Tribunal is confirmed.

10. This Court on reappraisal of the materials in the form of oral and documentary evidence, is inclined to award the following amounts as compensation.

Sl. No.	Heads	Amount awarded by the Tribunal	Amount Awarded by this Court	Award confirmed/reduced
1	Loss of Income	18,00,000	22,50,000	Enhanced by Rs.4,50,000/-
2	Loss of consortium to the first respondent	15,000	50,000	Enhanced by Rs.35,000
3	Loss of love and affection	40,000 (R1, R3, R4 and R5)	1,00,000 (R2 to R5)	Enhanced by Rs.60,000
4	Funeral expenses	5,000	5,000	Confirmed
	Total	18,60,000	24,05,000	Enhanced by Rs.5,45,000/-

11. In the result, the Civil Miscellaneous Appeal is disposed of and the award and decree insofar as the compensation is enhanced to Rs.24,05,000/- with interest at 7.5% p.a. from the date of petition till the date of realisation. The appellant/Transport Corporation is granted six weeks time to deposit the compensation amount, less the amount already deposited if any and on such deposit, the respondents 1, 4 and 5/major claimants are permitted to withdraw their share in the ratio as apportioned by the Tribunal, less the amount already withdrawn if any. The Tribunal shall deposit the shares of the respondents 2



and 3, who are minor claimants, in a Fixed Deposit in Indian Bank, Madurai Bench of Madras High Court, Madurai, to the credit of C.M.A.(MD)No.1013/2013, which shall be renewed periodically till they attain majority. The first respondent - mother of the minors is permitted to withdraw interest on the shares of her minor children, viz., the respondents 2 and 3, once in three months from the bank directly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

/True Copy/

Sub-Assistant Registrar

To

1. The Court of Motor Accidents Claims Tribunal/Sub-Court,
Ambasamudram.
2. The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

+One cc to Mr.R.Murugappan, Advocate, SR.No.57054

+One cc to Mr.P.prabhakaran, Advocate, SR.No.56988

smn2

RL/5C/6P/SS3/14.12.2016

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& M.P.(MD)No.2 of 2013

28.09.2016