

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 27.02.2017

CORAM

THE HONOURABLE Dr.JUSTICE S.VIMALA

C.M.A.No.1050 of 2017
and C.M.P.No.5171 of 2017

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

Vs

1.Raja
2.Tamilarasi
3.Minor Radhika
4.Minor Rajeswari
5.Minor Sivasakthi
Minors rep. by their
father & guardian Raja ... Respondents/Petitioners
6. The Managing Director
tamil nadu state Transport Corporation,
Vizhupuram division, vizhupuram, ... Respondent/Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 18.07.2012 made in M.C.O.P.No.53 of 2009 on the file of the Motor Accident Claims Tribunal [District & Sessions Judge], Tiruvarur.

For Appellant : Mr.D.Venkatachalam

J U D G M E N T

The deceased, Radha, aged 12 years, a student studying 9th standard, met with an accident that took place on 17.10.2007 and succumbed to the injuries sustained in the accident. Therefore, the legal representatives of the deceased filed a claim petition claiming compensation in a sum of Rs.20,00,000/-.

2.The Tribunal, on consideration of oral and documentary evidence, awarded compensation in a sum of Rs.3,15,000/-, the break-up details of which are as under:

Loss of dependency	-	Rs.1,50,000/-
Loss of expectation of life	-	Rs. 75,000/-
Loss of future prospects	-	Rs. 75,000/-
Love and affection	-	Rs. 10,000/-
Transport	-	Rs. 3,000/-
Funeral expenses	-	Rs. 2,000/-

Total	-	Rs.3,15,000/-

Challenging the award as excessive, the Transport Corporation has filed this appeal.

3.Though very many grounds have been raised in the appeal, however, at the time of argument, the learned counsel for the appellant has restricted his argument to the quantum of compensation alone and therefore, this Court is not venturing into the other grounds raised by the appellant.

4.Learned counsel appearing for the appellant submitted that the Tribunal has erroneously awarded a sum of Rs.1,50,000/- towards pecuniary loss by adopting multiplier 15, which is on the higher side. He further submitted that the Tribunal has awarded a sum of Rs.75,000/- towards loss of expectation of life and the sum of Rs.75,000/- awarded towards future prospects is excessive. Hence, the award requires to be reduced.

5.This Court gave its anxious consideration to the contentions advanced by the learned counsel for the appellant and perused the materials available on record as also the order passed by the Tribunal.

6.A perusal of the award passed by the Tribunal reveals that based on the age of the deceased, which has been fixed at 14 years, the Tribunal by adopting multiplier of 15 and quantified the compensation towards loss of dependency at Rs.1,50,000/-. Insofar as the compensation under the other heads are concerned, the Tribunal has awarded Rs.75,000/- towards loss of expectation of life, Rs.75,000/- loss of future prospects, Rs.10,000/- towards love and affection, Rs.3,000/- towards transport expenses and Rs.2,000/- towards funeral expenses.

7.Though it is the contention of the learned counsel for the appellant that the multiplier adopted by the Tribunal is on higher side, however, the said contention is liable to be rejected for the simple reason that the Tribunal has taken into consideration the ratio laid down by the Supreme Court, in R.K.Malik and other Vs Kiran Pal and others (AIR 2009 SC 2506) and has fixed the notional income. However, from a perusal of the order passed by the Tribunal, it is evident that a

typographical error has crept in the order, wherein, instead of mentioning Rs.15,000/- as the yearly income of the deceased, has erroneously mentioned Rs.15,000/- as the monthly income. However, while computing the compensation payable, the yearly income has been correctly taken at Rs.15,000/- as has been fixed by the Tribunal.

8. Though the Tribunal has followed the ratio laid down in R.K.Malick's case (supra) and fixed the notional income, however, it is to be pointed out that the notional income fixed is on the lower side. However, the claimants have not chosen to prefer any appeal against the compensation paid and, therefore, at this distant point of time, this Court is not inclined to interfere with the said award, when the fixation itself is on notional basis and not on the basis of any documentary evidence to substantiate the income. Equally so, the contention of the appellant that the compensation awarded is excessive cannot also be sustained as the Tribunal has erroneously fixed the notional income on the lower side and, but for the non filing of any enhancement appeal by the claimants, this Court is of the view that the compensation is inadequate. Therefore, by no means the compensation could be termed to be excessive and, accordingly, the quantification of compensation towards loss of dependency warrants no interference.

9. Insofar as the compensation awarded under the other heads, viz., loss of love and affection, loss of consortium and funeral expenses are concerned, the compensation awarded is very low. However, at this point of time, this Court is not inclined to enhance the compensation awarded under the non-pecuniary heads. Accordingly, the compensation awarded under the above heads are confirmed.

10. For the reasons aforesaid, there being no merits the appeal is liable to be dismissed. Accordingly, the appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

11. The appellant/Transport Corporation is directed to deposit the entire amount of compensation as awarded by the Tribunal, less the amount, if any, already deposited, along with interest at 7.5% per annum from the date of petition till the date of deposit, to the credit of the claim petition, within a period of four weeks from the date of receipt of a copy of this judgment. The claimants are entitled to compensation as per the ratio of the apportionment made by the Tribunal. On such deposit being made, the Tribunal is directed to transfer the respective share amounts of the claimants directly to their bank account through RTGS within a period of two weeks thereafter. The amount payable to the minor claimants shall be kept in fixed

deposit in anyone of the Nationalised Bank, till the minor claimants attain majority. The interest payable on such deposit shall be payable to the mother once in three months by the bank under due intimation to the Tribunal.

Sd/-

Assistant Registrar(CS-iii)

//True Copy//

Sub Assistant Registrar

gya/GLN

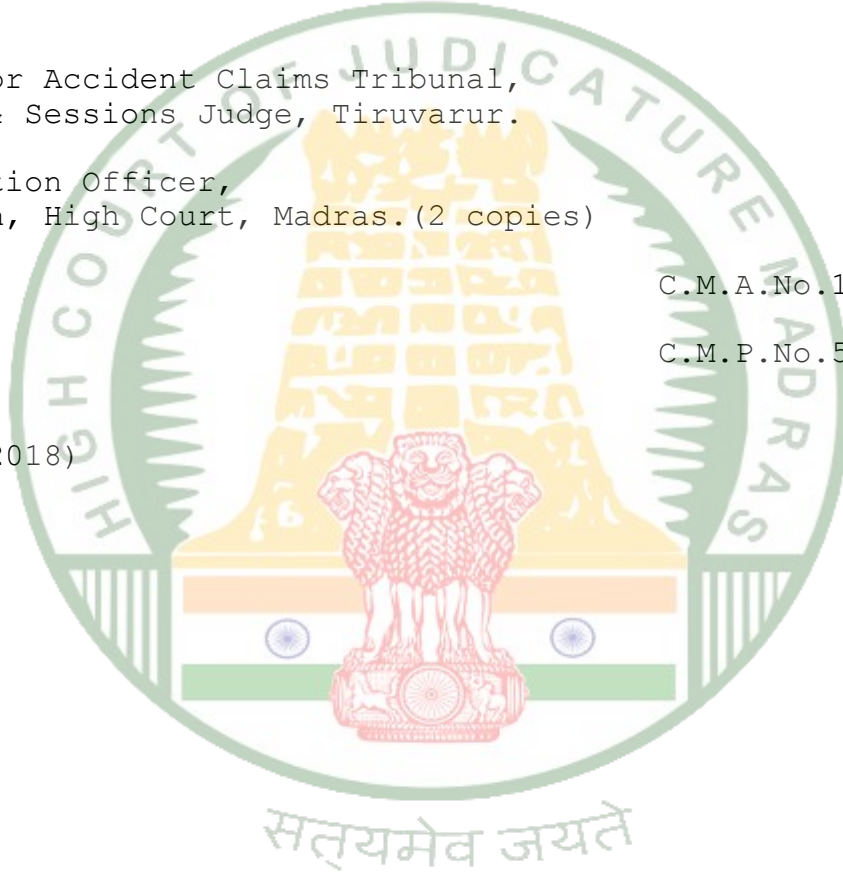
To

1.The Motor Accident Claims Tribunal,
District & Sessions Judge, Tiruvarur.

2.The Section Officer,
VR Section, High Court, Madras.(2 copies)

C.M.A.No.1050 of 2017
and
C.M.P.No.5171 of 2017

mr (CO)
TR(21/05/2018)



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