

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 27/3/2017

C O R A M

The Honourable Mr.Justice S.Manikumar
and
The Honourable Mr.Justice M.Govindaraj

Civil Miscellaneous Appeal Nos.1145 and 1146 of 2017

The Managing Director
Tamil Nadu State Transport corporation Ltd
Villupuram. Appellant in both
the appeals

Vs

1. P. Priya
2. Minor R.P.Saranya
(rep. By the next friend and
guardian Mother P.Priya)
3. S. Kalaiselvi
4. D. Munirathinam Respondents in both
the appeals

Prayer: Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree, dated 20/10/2016, made in M.C.O.P.Nos.587 and 588 of 2015, on the file of the Motor Accident Claims Tribunal, Special District Court, Krishnagiri.

For Appellant : Mr.K.J.Sivakumar

For Respondents : Mr.SP.Yuvaraj

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COMMON JUDGMENT

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

In the accident, which occurred on 21/5/2015, between a motor cycle, bearing Registration No.TN24B-2707 and a transport Corporation bus, bearing Registration No.TN25N-0135, M.Rajadurai, aged about 42 years, minor daughter, Abinayasree,

aged about 7 years, studying in II Standard, in Adhiyaman Matric School, Uthangarai, died. A case in Crime No.319 of 2015, under Sections 279, 337 and 304 of the Indian Penal Code has been registered, against the driver of the Transport Corporation bus.

2. Contending inter alia that at the time of accident, the sole bread winner and deceased, was an agriculturalist and also running a fertiliser shop in the name and style of Kalaimagal Agro Service, earned Rs.30,000/- p.m., legal representatives, wife, minor daughter and parents of the deceased filed M.C.O.P.No.587 of 2015, on the file of the Motor Accident Claims Tribunal (Principal District Judge), Krishnagiri, claiming compensation of Rs.50 lakhs.

3. Mother, minor sister and grandparents of the deceased Abinayasree filed M.C.O.P.No.588 of 2015, on the file of the Motor Accident Claims Tribunal (Principal District Judge), Krishnagiri, claiming compensation of Rs.15,00,000/-

4. As both the claim petitions arose out of the same accident, evidence being common, they were tried together.

5. On evaluation of pleadings and evidence, by a common judgment in M.C.O.P.Nos.587 and 588 of 2015, dated 20/10/2016, the claims Tribunal held that the driver of the Transport Corporation bus, bearing Registration No.TN25N-0135, was negligent in causing the accident.

6. In so far as M.C.O.P.No.587 of 2015, claiming compensation of Rs.50 lakhs, for the death of M.Rajadurai, based on the oral testimony of P.W.1 wife, Ex.P.7 Diploma Certificate issued by Tamil Nadu Agricultural University, Coimbatore, to the deceased and Ex.P.8 Bill books of Kalaimagal Agro Service, by accepting the avocation, the Tribunal fixed the monthly income of the deceased as Rs.12,000/-. However, when the dependants were only 4 in number, Tribunal deducted 1/5 towards the personal and living expenses of the deceased and thus arrived at the monthly income as Rs.9,600/-. Based on Ex.P.2 Post-mortem certificate, the Tribunal determined the age of the deceased, as 42 years. By applying 15 multiplier, computed the loss of contribution to the family as Rs.17,28,000/- (9600 x 12 x 15). A sum of Rs.1,50,000/- has been awarded as loss of consortium. Rs.2 lakhs under the head loss of Love and Affection, Rs.25,000/- under the head funeral expenses, and Rs.5,000/- for transportation has been awarded. Altogether, the Tribunal has awarded Rs.21,08,000/-, with interest at the rate of 7.5% p.a., from the date of claim, till deposit and costs, as hereunder:-

Loss of earnings	...	Rs. 17,28,000/-
Transport to Hospital	...	Rs. 5,000/-
Funeral Expenses	...	Rs. 25,000/-
Loss of Consortium	...	Rs. 1,50,000/-
Loss of Love and Affection...	Rs.	2,00,000/-

Total	Rs.21,08,000/-
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7. As regards compensation to the mother, minor daughter and others, for the death of the minor child, Abinayasree, aged about seven years, following the decision of the Supreme Court in R.K.Malik & Another Vs. Kiran Pal & Ors reported in {2009 (1) TNMAC 593}, Jithender Kumar and another Vs The Oriental Insurance Company Ltd., and another, reported in 2010 (1) TNMAC 688, the Tribunal determined the pecuniary damages and future prospects as Rs.3,75,000/-. That apart, the Tribunal has awarded Rs.5,000/- under the head Transport to Hospital, Rs.25,000/- for Funeral Expenses and Rs.2,00,000/- for loss of Love and Affection. Altogether, the Tribunal had awarded compensation of Rs.6,05,000/-, with interest at the rate of 7.5% p.a., from the date of claim till deposit and costs.

8. Challenging the quantum of compensation, awarded by the Motor Accident Claims Tribunal, Managing Director, Tamil Nadu State Transport Corporation Ltd., Villupuram has filed C.M.A.Nos.1145 and 1146/2017 respectively.

9. As both the appeals arise out of the same accident and having regard to the submission of Mr.K.J.Sivakumar, learned Counsel for the Transport Corporation that though grounds have been raised, assailing the findings of negligence fixed on the driver of the State Transport Corporation bus, he would restrict the challenge only to the quantum of compensation and placing on record the above, we are of the view that there is no need to delve in to the aspect of the finding fixing the negligence on the driver and consequently liability.

10. As regards the quantum of compensation of Rs.21,08,000/-, with interest at the rate of 7.5% p.a., from the date of claim till deposit, the only contention of Mr.K.J.Sivakumar, learned counsel for the Transport Corporation is that when the number of dependants are 4, the Tribunal ought to have deducted 1/4 towards personal and living expenses of the deceased and not 1/5.

11. Caveator is on record.

12. As rightly contended by the learned counsel for the appellant, as per the decision of the Hon'ble Supreme Court in {(2009) 6 Supreme Court Cases - 121 (Sarla Verma (Smt) and

Others Vs. Delhi Transport Corporation and Another), where the number of dependants are 4 to 6, 1/4th should be a deducted towards personal and living expenses. There is no other challenge.

13. At the time of accident, wife was aged about 36 years. The Tribunal has awarded Rs.1,50,000/-, under the head loss of consortium and the same requires some deduction.

14. 'Consortium' as per the Best v. Samuel Fox reported in 1952 AC 716 means, "Duty owed by a wife to her husband and vice versa, companionship, love and affection, comfort, mutual services, sexual intercourse, etc." In Rajesh and others v. Rajbir Singh and others reported in 2013(3) CTC 883, the Apex Court, held as follows:

"In legal parlance, 'Consortium' is the right of the spouse to the company, care, help, comfort, guidance, society, solace, affection and sexual relations with his or her mate. That non-pecuniary head of damages has not been properly understood by our Courts. The loss of companionship, love, care and protection, etc., the spouse is entitled to get, has to be compensated appropriately. The concept of non-pecuniary damage for Loss of Consortium is one of the major heads of award of compensation in other parts of the world more particularly in the United States of America, Australia, etc. English Courts have also recognized the right of a spouse to get compensation even during the period of temporary disablement. By Loss of Consortium, the Courts have made an attempt to compensate the loss of spouse's affection, comfort, solace, companionship, society, assistance, protection, care and sexual relations during the future years. Unlike the compensation awarded in other countries and other jurisdictions, since the legal heirs are otherwise adequately compensated for the pecuniary loss, it would not be proper to award a major amount under this head. Hence, we are of the view that it would only be just and reasonable that the Courts award atleast Rupees one lakh for Loss of Consortium."

15. Sum of Rs.5,000/- awarded under the head transportation is less. Tribunal has not awarded any compensation under the head loss of estate and conventional damages. However, reworking of compensation under the head loss of contribution to the family requires to be done by applying 1/4 deduction. Thus, doing so, quantum of compensation, under the said head, works out to Rs.14,74,200/-. Compensation under the head Love and Affection is sustained. Consortium is reduced by Rs.50,000/-. A sum of Rs.10,000/- ought to have been awarded under the head transportation.

16. Bereaved family is entitled to loss of estate Rs.10,000/-. There is no award under the head conventional damages. Hence, Rs.2,000/- can be awarded. After reworking, compensation due and payable to the legal representatives works out to Rs.18,21,000/-, with interest at the rate of 7.5% p.a., from the date of claim, till deposit and costs as hereunder:-

Loss of contribution to the family	...	Rs.14,74,200/-
Loss of Love & Affection to minor sister	...	Rs. 1,00,000/-
Loss of Love & Affection to the parents (Rs.50,000/- each)	...	Rs. 1,00,000/-
Loss of consortium	...	Rs. 1,00,000/-
Funeral expenses	...	Rs. 25,000/-
Transportation	...	Rs. 10,000/-
Loss of estate	...	Rs. 10,000/-
Damages to clothes and articles	...	Rs. 2,000/-

Rs.18,21,000/-

17. Compensation awarded by the Tribunal is Rs.21,08,000/-. On appeal, compensation determined by this Court is Rs.18,21,000/-. Consequently, there shall be a reduction in the quantum of compensation by Rs.2,86,800/- {21,08,000/- (-) 18,21,200/-}. Reduction of compensation would be from the share of the wife. Share apportioned to the minor remains intact. Consequent to the reduction of the compensation stated supra, Tamil Nadu State Transport Corporation Ltd., Villupuram, is directed to deposit the amount of Rs.18,21,200/- (Rupees Eighteen lakhs twenty one thousand and two hundred only), with

interest at the rate of 7.5% p.a., from the date of claim till deposit and costs, less the statutory deposit, within a period of four weeks, from the date of receipt of a copy of this order. In both the appeals, share apportioned to the share of the majors, with proportionate interest is permitted to be withdrawn. Minor share in both the appeals shall be deposited in a Nationalised Bank, in fixed deposit under the reinvestment scheme initially for a period of three years. The interest accruing on the share of the minors shall be paid to the 1st respondent/mother of the minors once in three months, till they attain majority. On such deposit being made, except the minors, the respondents/claimants are permitted to withdraw the award amount as apportioned by the tribunal, by making necessary applications.

18. As regards the quantum of compensation of Rs.6,05,000/- awarded to the mother and others, for the death of minor child, Tribunal has considered the decision of the Hon'ble Supreme Court in {2009 (1) TN MAC - 593} R.K.Malik & Another Vs. Kiran Pal & Ors. Here again, there is no award under the head conventional damages. Compensation of Rs.5,000/- for transportation is less. Quantum cannot be said to be a bonanza or a windfall to the mother, who has lost her seven years old daughter. We are not inclined to interfere with the same.

19. Accordingly, these Civil Miscellaneous Appeals are dismissed. No costs.

20. Though Mr.K.J.Sivakumar, learned counsel for the State Transport Corporation, prayed for a direction, to release two buses, bearing Registration Nos.TN23N-2399 and TN23L-2144, from an order of attachment, passed by the Motor Accident Claims Tribunal, Krishnagiri, this Court is not inclined to issue any such directions. However, taking note of the interest of the commuters, vis-a-vis, the legal representatives of the deceased, we permit the Transport Corporation, to deposit the compensation determined, in each of the claim petitions/appellants, in two equal instalments, with proportionate interest. On the deposit of the first instalment (50% of the amount, determined by this Court, with proportionate interest and costs), Transport Corporation is at liberty to approach the executing Court for vacating the order of attachment. On such deposit, Tribunal shall consider and pass appropriate orders.

Sd/-

Asst.Registrar (CCC)

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Sub Asst. Registrar

mvs

To

1.The Motor Accident Claims Tribunal, Special District Court,
Krishnagiri.

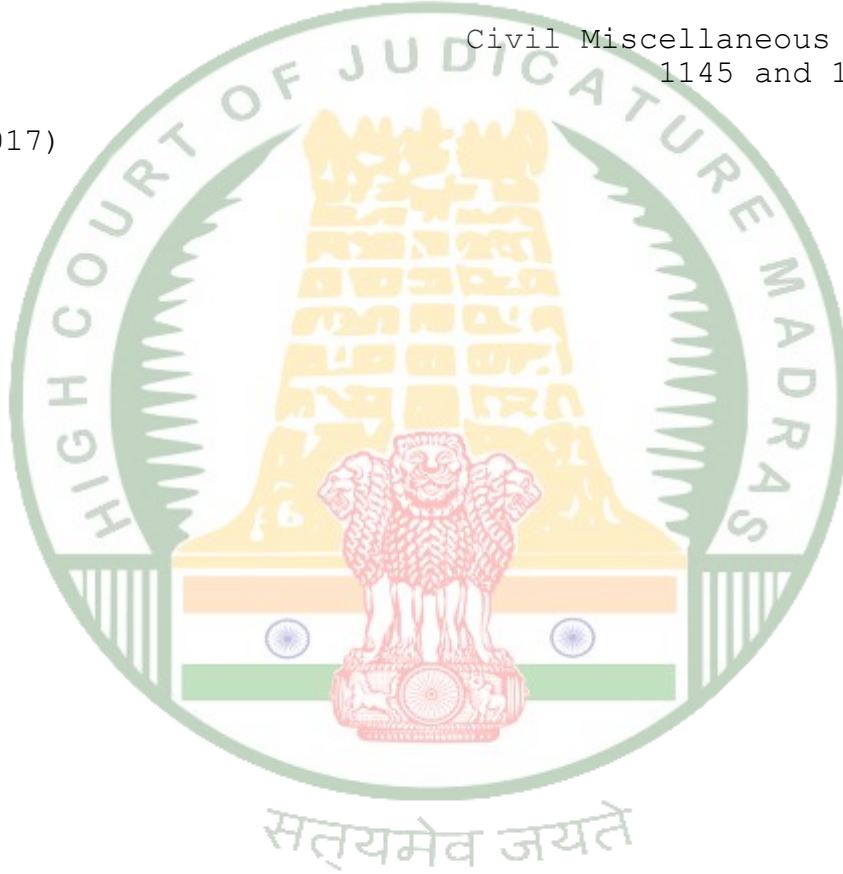
2.The Managing Director,Tamil Nadu State Transport
Corporation Ltd., Villupuram

+2cc to M/s.Sp.Yuvaraj,Advocate sr.18939&18940

+2cc to M/s.K.J.Sivakumar,Advocate sr.18913 & 18914

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