

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :06.04.2017

CORAM :

THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

CMA.Nos.2104 of 2015 and 2689 of 2016
and C.M.P.No.19296 of 2016

1. Kasthuri
2. Chitra
3. Kanimozhi
4. Balamurugan ... Appellants in C.M.A.No.2104 of 2015

The Managing Director,
Tamil Nadu State Express Transport Corporation Ltd
Chennai - 2 ... Appellant in C.M.A.No.2689 of 2016.

Vs.

Managing Director
State Express Transport Corporation Limited
Chennai 600 002 ... Respondent in C.M.A.No.2104 of 2015

1. Kasthuri
2. Chitra
3. Kanimozhi
4. Balamurugan ... Respondents in C.M.A.No.2689 of 2016

Prayer : Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the award dated 19.04.2013 made in M.A.C.T.O.P.No.2030 of 2009 on the file of the Motor Accident Claims Tribunal, III Small Causes Court, Chennai.

For Appellants
in C.M.A.No.2104 of 2015
For Respondents
in C.M.A.No.2689 of 2016 : Mr.V.Velu

For respondent
in C.M.A.No.2014 of 2015
For Appellant
in C.M.A.No.2689 of 2016: Mr.S.V.Vasanthakumar

JUDGMENT

These appeals arise out of the order passed in M.C.O.P.No.2030 of 2009 on the file of the Motor Accident Claims Tribunal, (III Small Causes Court) Chennai.

2. This is a case of fatal injury. On 27.04.2009 at about 8.00 p.m., while the deceased was walking on the left side of E.C.R.Road, the TNSTC bus bearing Registration No.TN-01-N-7106, came in a rash and negligent manner and dashed against the deceased, due to which, he sustained fatal injuries. Hence, the claimants approached the Tribunal with a claim for Rs.10,00,000/-, as compensation, against which, the Tribunal has passed an award for Rs.7,54,530/- payable with interest @ 7.5% per annum on the following heads.

<i>Heads</i>	<i>Amount (in Rs.)</i>
Loss of Dependency	6,84,528/-
Loss of Consortium	20,000/-
Funeral Expenses	10,000/-
Love and affection	40,000/-
Total	7,54,530/- (Rounded off)

3. Heard the learned counsel for the Appellants and the learned counsel for the respondents and vice-versa perused the materials available on record.

4. So far as C.M.A.No.2689 of 2016 is concerned, the learned counsel appearing for the Transport Corporation submitted that the accident occurred only due to the negligence on the part of the deceased, who has suddenly crossed the road without noticing the vehicle and sustained fatal injuries, which has been proved by the Transport Corporation through R.W.1-driver. But, the same was not accepted by the Tribunal. It is further contended on behalf of the Transport Corporation that the total amount of compensation awarded by the Tribunal is highly excessive. Challenging the same as excessive and disproportionate, the Transport Corporation has filed C.M.A.No.2689 of 2016 and claimants have filed C.M.A.No.2104 of 2015 seeking enhancement of compensation.

5. On a perusal of the award, which has been passed taking into consideration the oral and documentary evidence, it is seen that the Tribunal has rightly fixed the negligence on the part of the driver of the bus belonging to the appellant/Transport Corporation.

6. Further, regarding the enhancement of compensation, a perusal of the award would go to show that though as per Ex.P.4-Salary certificate, the monthly income is Rs.6,000/-, in absence of any evidence and since the Supervisor, who issued the same, had not been examined, the Tribunal had considered the income at Rs.4,500/-

. As per the judgment of the Supreme Court reported in 2014.(1) TN MAC 459 (***Syed Sadiq Vs., Deputy Manager, United India Insurance Co. Ltd***), in the absence of any evidence, notional income of Rs.6,500/- has to be taken. However, this Court is inclined to place the reliance on Ex.P-4 itself and modifies the monthly income at Rs.6,000/-. Fixing Rs.6,000/- per month as salary, 30% of the same has to be added for the purpose of future prospects, which would be Rs.7,800/-. Now deducting 1/4th towards personal expenses, the contribution to the family would be Rs.5,850/-. Then, the pecuniary loss would be $\text{Rs.5,850} \times 12 \times 13 = 9,12,600/-$ Under the Head "Loss of Consortium", the Tribunal had awarded only Rs.20,000/-. Considering the fact that the first claimant, the widow of the deceased was only 43 years old and therefore, a sum of Rs.1,00,000/- is awarded. The award under the head "Funeral Expenses" is also enhanced to Rs.25,000/-. Under the Head "Love and affection", for three children, it is fixed at Rs.20,000/- each, which should be Rs.60,000/-. Accordingly, the compensation awarded by the Motor Accident Claims Tribunal is revised as follows:-

<i>Heads</i>	<i>Amount (in Rs.)</i>
Loss of Dependency	9,12,600/-
Loss of Consortium	1,00,000/-
Funeral Expenses	25,000/-
Love and affection	60,000/-
Total	10,97,600/-

7. Except contending that the award of the Tribunal is higher side, the Transport Corporation is unable to substantiate its contentions. Therefore, there is no merit in the appeal filed by the Transport Corporation. Accordingly, **C.M.A.No.2689 of 2016 is dismissed.**

8. **C.M.A.No.2104 of 2015 is partly allowed** and the amount awarded by the Tribunal is enhanced from Rs.7,54,530/- to Rs.10,97,600/-payable with interest at the rate of 7.5% per annum from the date of claim petition till the date of payment. The Transport Corporation is directed to deposit the said amount within a period of four weeks from the date of receipt of a copy of this judgment and the claimant is entitled to withdraw the same forthwith. The claimants are directed to pay the necessary Court fee, if any for the enhanced portion of the award amount. No costs. Consequently, connected miscellaneous petition is closed.

06.04.2017

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Index : Yes/No

Internet:Yes/No

To

1.The Motor Accident Claims Tribunal,
III Small Causes Court, Chennai.

2.The Record Keeper,
VR Section, High Court, Madras.

PUSHPA SATHYANARAYANA.J

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