

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 12.10.2017

CORAM:

THE HONOURABLE MR.JUSTICE C.T.SELVAM
AND

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Civil Miscellaneous Appeal No.1622 of 2014

The Managing Director,
M/s.Tamil Nadu State Transport Corporation Ltd.,
Chennimalai Road,
Erode.

.. Appellant/Respondent

Vs

1. R.Esakkiraja
S/o.Rengan

2. Minor E.Akash
S/o.Esakkiraja
Minor represented by his
father N/F Guardian
Easkkiraja

..Respondents/2nd & 3rd Petitioner

3.Vivekanandan
(R3 given up)

..3rd Respondent/Respondent

Civil Miscellaneous Appeal filed u/s.173 of the Motor Vehicles Act, 1988, against the judgment and decree of learned Special Subordinate Judge, Coimbatore, passed in M.C.O.P.No.2169 of 2012 on 05.10.2013.

For Appellant : Mr.S.V.Vasanthakumar
For Respondents : Mr.C.Veeraraghavan
[R1 & R2]
R3 - Given up

J U D G M E N T

[Judgment of the Court was made by C.T.SELVAM, J.]

This Civil Miscellaneous Appeal arises against the

judgment and decree of learned Special Subordinate Judge, Motor Accident Claims Tribunal, Coimbatore, passed in M.C.O.P.No.2169 of 2012 on 05.10.2013.

2. Appellant is the Transport Corporation. Respondents 1 to 3 are legal heirs of one Vairamani, wife of first respondent, who died owing to an accident involving a bus bearing registration No.TN-33-N-2648 and the motor cycle being driven by first respondent, on 18.07.2012.

3. Before the Tribunal, on the side of respondents 1 and 2/claimants, 3 witnesses were examined and 18 exhibits were marked. On the side of appellant transport corporation, 1 witness was examined and no exhibits were marked.

4. On appreciation of materials before it, Tribunal, under judgment dated 05.10.2013, found that the death has occurred owing to the rash and negligent driving of the bus. To prove the avocation of the deceased, respondents 1 and 2 have examined PW-2, who was working with the deceased and Ex.P17 - salary certificate of the deceased informing the salary details was marked and based on the same, Tribunal has fixed the monthly income of the deceased at Rs.19,367/-. Following the rationale of the judgment of the Honourable Apex Court in Sarala Verma and others v. Delhi Transport Corporation and another [2009 (5) L.W. 561], the Tribunal taking into consideration the fact that the dependents of the deceased were two in number, deducted 1/3rd from her earning and applied the multiplier 17, given the fact that the age of the deceased was informed to be 28 in the claim petition as also other records. This Court finds that a reasonable sum of Rs.1,00,000/- stands awarded for loss of consortium, a sum of Rs.1,00,000/- towards loss of love and affection and a sum of Rs.5,000/- towards loss of estate and further, a sum of Rs.25,000/- for funeral expenses. The total compensation awarded amounts to Rs.28,63,912/- rounded off to Rs.28,64,000/-. Appellant Transport Corporation was directed to pay the said sum together with interest at 7.5% p.a. from the date of claim petition till the date of payment. The Tribunal has also directed due apportionment of the compensation amount between the claimants inter alia directing the deposit in a nationalised bank, 20% of the amount payable to first respondent and the sums payable to second respondent till he attains majority.

5. Learned counsel for appellant transport corporation submits that the tribunal has failed to consider the fact that the rider has contributed to the accident and accordingly, determine the contributory negligence on the part of the deceased. This Court is unable to accept such contention given the clear finding of tribunal of the bus having been driven in a rash and negligent manner.

6. Learned counsel for respondents 1 and 2 points out that the Tribunal has not made provision for future prospects of deceased. Referring to Ex.P17, Salary Certificate of the deceased, learned counsel contends that where the deceased was earning a sum of Rs.19367/- p.m. and was aged 28 years, the decision of the Supreme Court in Sarala Verma would require a further inclusion of 50% of the salary towards future prospects.

7. This Court finds merit in the submission of learned counsel for respondents 1 and 2 that provision ought to be made towards future earning prospects of the deceased. A provision of 50% is made towards future prospects. Accordingly, the compensation payable would be as follows:

(a) Loss of dependency	
(Rs.19367+50% (-) 9683)*12*17)	: Rs.39,50,868/-
(b) Loss of consortium	: Rs. 1,00,000/-
(c) Loss of love and affection :	Rs. 1,00,000/-
(d) Funeral expenses	: Rs. 25,000/-
(e) Loss of Estate	: Rs. 5,000/-

	Rs.41,80,868/-

The said sum of Rs.41,80,868/- shall be payable together with interest at 7.5% from the date of petition till the date of realization.

The Civil Miscellaneous Appeal is disposed of with the above modification. Appellant Transport Corporation is directed to deposit the enhanced compensation amount less that already deposited within a period of eight weeks from the date of receipt of this judgment. First respondent/claimant is at liberty to withdraw the amount on due application as apportioned by Tribunal. Sum payable to second respondent/minor shall be held in deposit with a nationalised bank during the period of his minority. First respondent may withdraw the interest on such deposit once in three months towards defraying the expenses of second respondent. Deficit Court fee, if payable, by respondents 1 and 2 in keeping with the quantum awarded by this Court shall be paid within two months of the receipt of this judgment. No costs.

s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Special Subordinate Judge,
Motor Accident Claims Tribunal,
Coimbatore.

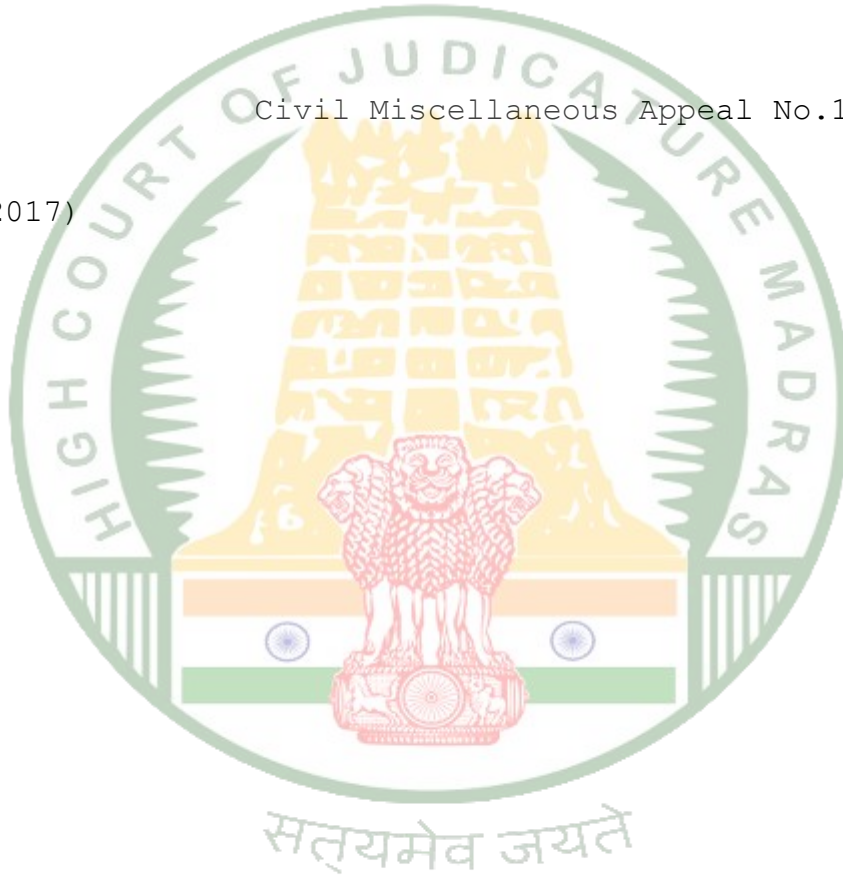
2. The Section officer
VR Section, High Court, Madras.

+1 Cc to Ms.S.V. Vasanthakumar, advocate sr 73252.

+1 Cc to Ms.C. Veeraraghavan, Advocate sr 73335.

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CNR(CO)
SP(30/11/2017)



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