

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.06.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

and

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A.No.1836 of 2017
and CMP No.9871 of 2017

The Managing Director,
Tamilnadu State Transport Corporation,
Kancheepuram Division,
Kancheepuram

... Appellant/Respondent

versus

1. S.priya
 2. S.Vigneshwari (minor)
 3. S.Ajithkumar (minor)
 4. S.Varankumar (minor)
 5. Dilliammal
- ... Respondents

[Respondents 2 to 4 are minors represented by their mother and natural guardian 1st respondent viz., S.Priya]

Prayer: Civil Miscellaneous Appeal is filed, against the judgment and decree in M.C.O.P.No.1103 of 2009, dated 29.01.2016, on the file of the Motor Accident Claims Tribunal, [I Additional District Court], Tiruvallur.

For Appellant : Mr.P.Paramasivadoss

JUDGMENT

(Judgment of the Court was made by S.MANIKUMAR ,J.)

In the accident, which occurred on 11.09.2002, involving a transport Corporation bus bearing Regn.No.TN-21-N-0299 and a Hero Honda Motor cycle bearing Regn.No.TN20-9413, the motorcyclist stated to be a workman in MRF company, aged about 32, sustained grievous injuries and succumbed to the same. A case in Cr.No.651 of 2002 under Sections 279 and 304(A) IPC has been registered on the file of Arakkonam Gramiya Police Station, against the driver of the bus. Contending inter alia that he earned Rs.13,520.31p, legal representatives of the deceased viz., wife, three minor children and mother filed MCOP No.1103 of 2009 on the file of MACT [I Additional District Court], Tiruvallur, claiming compensation of Rs.25,00,000/- under various head.

2. Before the tribunal, 1st respondent-wife examined herself as PW1 and reiterated the manner of accident, attributing negligence to the driver of the transport corporation bus. PW2, is the Human Resource Officer, MRF Company, adduced evidence supporting avocation and monthly income of the deceased. PW3, is stated to be an eye witness. Ex.P1, FIR, Ex.P2, Postmortem Report, Ex.P3, legal heir certificate, Exs.P4 and P6 to P8 are pay slips for the months of January, June, July and August 2002, respectively, have been marked. No oral or documentary evidence has been adduced on the side of the Transport Corporation.

3. On evaluation of pleadings and evidence, the tribunal held that the driver of the transport corporation bus was negligent in causing the accident. The tribunal, accepted the avocation of the deceased i.e., workman in MRF company and relying on the documents, Ex.P4 to P7, stated supra, fixed the monthly income of the deceased as Rs.13,000/-. As he was stated to be aged 32 years, the Tribunal added, 30% of the income fixed under the head future prospects and for the purpose of computation of loss of contribution to the family, taken Rs.16,900/-. Number of legal representatives being 5, the tribunal deducted 1/6th towards personal and living expenses of the deceased and computed the loss of contribution to the family as Rs.27,04,000/-. That apart, awarded Rs.25,000/- under the head loss of consortium, Rs.60,000/- for loss of love and affection to the respondents 2 to 6, minor children and mother, Rs.10,000/- for funeral expenses and Rs.5,000/- for transportation. Altogether, the tribunal awarded compensation of Rs.28,04,000/- with interest at the rate of 7.5% per annum from the date of claim till deposit.

4. Tamilnadu State Transport Corporation, Kancheepuram Division is on appeal, challenging the quantum of compensation. Supporting the prayer, Mr.P.Paramasiva Doss, learned counsel for the Transport Corporation submitted that determination of monthly income as Rs.13,000/- is excessive. According to him, when PW2, Human Resource Officer, MRF Company has categorically deposed that at the time of accident, the deceased earned Rs.6,000/- only, the tribunal ought not to have fixed the monthly income as Rs.13,000/-. Except the above no other submission is made.

5. Having regard to the restricted submission, we propose to examine as to how the tribunal has determined the monthly income of the deceased. PW1, wife of the deceased has deposed that her husband was a workman in MRF company and earned Rs.13,520.31p. PW2, Human Resource Officer, MRF Company has supported the avocation. Exs.P4, P6 & P7 are the payslips. Upon perusal of Ex.P4, the tribunal has noticed that salary was mentioned as

Rs.13,520.31p. In Ex.P6 to P8, salary is mentioned as follows:

Ex.P6 - Pay Slip for the month of June 2002 : Rs.6,370.16p
Ex.P7 - Pay Slip for the month of July 2002 : Rs.6,046.22p
Ex.P8 - Pay Slip for the month of August 2002: Rs.5,173.00p

6. However, upon perusal of Ex.P4-salary certificate for the month of January 2002, tribunal has also noticed that sum of Rs.6,000/-, thrift loan earn and a sum of Rs.1,000/- towards LTA and Miscellaneous income, were shown. Tribunal has also taken note of the testimony of PW2, Human Resource Officer, who had categorically deposed that a co-worker was paid Rs.22,000/- per month and that the deceased was a permanent worker. He has further added that had the deceased been alive, he would have been earned a sum of Rs.22,000/- per month, salary paid to a co-worker. Therefore, having regard to the entries in the pay slips and taking note of the average income of the co-worker and the deceased, the tribunal fixed the monthly income as Rs.13,000/-.

7. Accident has occurred on 11.09.2002. To provide food, shelter, clothing, education, health and to meet out the basic amenities to the family comprising of wife, three minor children and mother aged about 65 years, sum of Rs.6,000/- would be hardly sufficient. One requires a reasonable income. Rs.13,000/- fixed as monthly income, cannot be said to be grossly excessive, warranting reduction. Consumer Price Index, inflation and such other economic factors are also to be taken note of while fixing the monthly income of the deceased for the purpose of computing the loss of contribution to the family. Having regard to the above, we are of the view that the monthly income fixed is not excessive.

8. Though Mr.P.Paramasiva Doss, learned counsel for the transport corporation sought for reduction in the monthly income and consequently the over all quantum of compensation, perusal of the award shows that the tribunal has failed to award a just and reasonable compensation under the head loss of consortium to the wife, who was just 35 years at the time of accident. In Rajesh and others Vs. Rajbir Singh, reported in 2013 ACJ 1403, the Hon'ble Supreme Court awarded Rs.1 Lakh under the head loss of consortium. Three minor children aged about 15 years, 13 years and 10 years, respectively, at the time of accident have lost the love and affection of their father and mother, who was aged about 65 years, has lost the love and affection of her son. Rs.60,000/- awarded under the head loss of love and affection to the minor children and mother, is a pittance. There is no award for loss of estate and conventional damages. Overall quantum of compensation appears to be less. There is no merit in the appeal and the same is dismissed. At this juncture, it is made clear that dismissal of the appeal filed by the transport corporation

will not foreclose the right of the legal representatives of the deceased to seek for appropriate compensation, if so advised. No Costs. Consequently the connected Miscellaneous Petition is closed.

9. Mr.P.Paramasiva Dass, learned counsel appearing for the Managing Director, Tamilnadu State Transport Corporation, Kancheepuram, submitted that the entire award amount with proportionate interest and costs, would be deposited within six weeks from the date of receipt of a copy of this order. Submission is placed on record.

10. In view of the above, there shall be a direction to the Managing Director, Tamilnadu State Transport Corporation, Kancheepuram the appellant herein, to deposit the entire award amount with interest at the rate of 7.5% per annum from the date of claim till deposit and costs, less the statutory deposit, to the credit of M.C.O.P.No.1103 of 2009, on the file of the Motor Accident Claims Tribunal, [I Additional District Court], Tiruvallur, within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the respondents/claimants are permitted to withdraw their share in the award amount, as apportioned by the tribunal, with proportionate interest and costs, by making necessary applications.

11. Post the Civil Miscellaneous Appeal after six weeks, 'for reporting compliance'.

Sd/-
Assistant Registrar(CO)

//True Copy// सत्यमेव जयते

Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal,
[I Additional District Court], Tiruvallur.

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

copy to

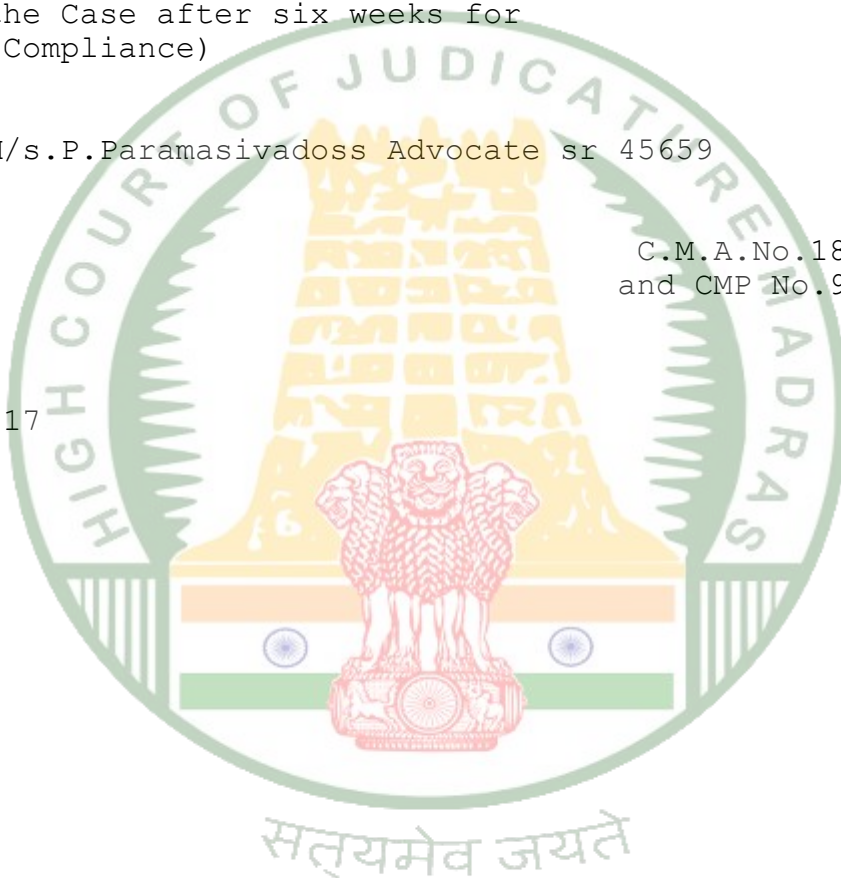
The Section Officer
Judicial Department
High Court, Madras

(To Post the Case after six weeks for
reporting Compliance)

+1 cc to M/s.P.Paramasivadoss Advocate sr 45659

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