

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.09.2017

CORAM:

THE HON'BLE Dr. JUSTICE S.VIMALA

Civil Miscellaneous Appeal No.2780 of 2014

and C.M.P.No.15875 of 2017

The Managing Director,
State Express Transport Corporation Ltd.,
Anna Salai, Chennai 600 002 ... Appellant/Respondent

..vs..

1. Sivagami
2. M.Murugavel
- M.Anandavel (died)
3. M.Vadivel
4. M.Kanagavel
5. A.Soundarya
6. V.Rajalakshmi ... Respondents/claimants

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree, dated 04.03.2017 made in M.C.O.P.No.2581 of 2011 on the file of the Motor Accident Claims Tribunal, Principal District Judge, Cuddalore.

For Appellant : Mr. K.J.Sivakumar

J U D G M E N T

The Legal Representatives of the deceased, namely, the wife-Sivagami-(P-1)-aged 45, the sons - M.Murugavel-(P-2)-aged 34, M.Anandavel-(P-3)-aged 32, M.Vadivel-(P-4)-aged 30 and M.Kanagavel-(P-4)-aged 25 did not know that the day, i.e., 11.10.2011 would be a fateful day for Masilamani.

2. The deceased Masilamani was aged 55 and a Cashewnut business dealer and an Agriculturist, earning a sum of Rs.10,000/- per month, met with a fatal accident on 11.10.2011. This accident was happened when the deceased was riding his bicycle from South to North, on the Chennai to Kumbakonam Main Road. Immediately, after the accident, he was admitted at Government Hospital, Panruti, where he was declared dead. The Legal Representatives of the deceased claimed a sum of Rs.10,00,000/- as compensation.

3. As against the claim made, the Tribunal has passed an award for a sum of Rs.4,90,000/-, rounded off to Rs.5,00,000/-. Challenging this award as excessive, the Transport Corporation has filed this Appeal. The sixth and seventh claimants, namely, Soundarya and Rajalakshmi, have been impleaded as parties, as per the order, dated 01.12.2007, passed in I.A.No.594 of 2017. The sixth claimant was aged 40 and the seventh claimant was aged 31.

4. The breakup details of the award passed by the Claims Tribunal reads as under:-

Loss of dependency (Rs.45,000/- x 7)	- Rs.3,15,000/-
Loss of consortium to P-1	- Rs. 25,000/-
Loss of love and affection to P-2, 4 to 7	- Rs.1,25,000/-
Transport and funeral expenses	- Rs. 25,000/-

Total	- Rs.4,90,000/-

rounded off - Rs.5,00,000/-

5. Even though it was claimed by the Legal Representatives of the deceased that at the time of accident, the deceased was 55 years, the post-mortem report disclose the age of the deceased as 65 and therefore, the Tribunal has taken the age of the deceased as 65 at the time of accident.

6. The Tribunal has also given a finding that there was no documentary evidence to prove the income of the deceased. However, considering the nature of work, the Tribunal has taken the monthly income of the deceased at Rs.5,000/- and the annual income at Rs.60,000/-. On a perusal of the Legal Heirship Certificate, the Tribunal has chosen to add claimants 6 and 7 as Legal Representatives of the deceased. Considering the nature of the dependency, deduction towards the personal expenses of the deceased has been allowed at 1/4th (out of the total income). Thus, deducting Rs.15,000/-, the annual dependency has been calculated at Rs.45,000/-. Adopting the multiplier of 7, the loss of dependency has been calculated at Rs.3,15,000/-. The loss of consortium to the first claimant is awarded at Rs.25,000/-. The loss of love and affection to claimants 2 and 4 to 7 have been awarded at Rs.25,000/-, totalling Rs.1,25,000/-. Towards transport and funeral expenses, a sum of Rs.25,000/- have been awarded and thus, the total amount has been quantified at Rs.4,90,000/-, rounded off to Rs.5,00,000/-. During the pendency of the claim petition, the third claimant, M.Anandavel, died.

7. The learned counsel appearing for the appellant / Transport Corporation contended that, in the absence of any documentary evidence regarding the income of the deceased, the Tribunal ought not to have taken Rs.5,000/- as monthly income, especially when the deceased was proved to be aged 65. It is also contended that the age of the deceased was not proved through documentary evidence.

8. Even though the (respondents herein) claimants, before the Tribunal, contended that the deceased was aged 55, the Tribunal, by relying upon the post-moterm report, has fixed the age as 65 and not as 55 and therefore, the learned counsel

appearing for the appellant cannot have any grievance with regard to the fixation of the age.

9. So far as the income of the deceased is concerned, it is the case of the claimants that he was an agriculturist as well as doing business in Cashewnuts. Even though the claimants had asked for a sum of Rs.10,00,000/- as compensation, the Tribunal did not accept the case of the claimants as such and considering the age, experience and ability of the deceased, the monthly income has been taken at a modest estimate of Rs.5,000/-.

10. Further, when the dependent are seven in numbers, the Tribunal did not even consider the deduction of 1/5th, but has deducted only 1/4th from the total income of the deceased. Therefore, on this ground also, the appellant / Transport Corporation cannot have any grievance.

11. The learned counsel appearing for the appellant / Transport corporation asked for modification in respect of rate of interest, i.e., at the rate of 7.5% per annum from 8% interest.

11.1. Even this claim cannot be considered, as this Appeal is at the stage of admission and without notice to the claimants the rate of interest cannot be modified. Moreover, the rate of interest payable is also the rate prevailing in the Nationalized Banks. Therefore, the rate of interest also cannot be modified.

12. In view of the above reasonings, the Civil Miscellaneous Appeal filed by the Transport Corporation has no grounds of acceptance. The award of compensation passed by the Claims Tribunal is reasonable, just, fair and does not require any interference by this Court. Thus, the Civil Miscellaneous Appeal is dismissed. No costs.

13. The appellant / Transport Corporation is directed to deposit the amount of compensation, as awarded by the Claims Tribunal, along with interest at 8% per annum, from the date of petition till the date of deposit, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the award amount to the Savings Bank Accounts of the claimants, through RTGS, as per the ratio of apportionment made by it. Accordingly, CMP No.15875 of 2017 is closed.

Sd/-

Assistant Registrar(CS VII)

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Sub Assistant Registrar

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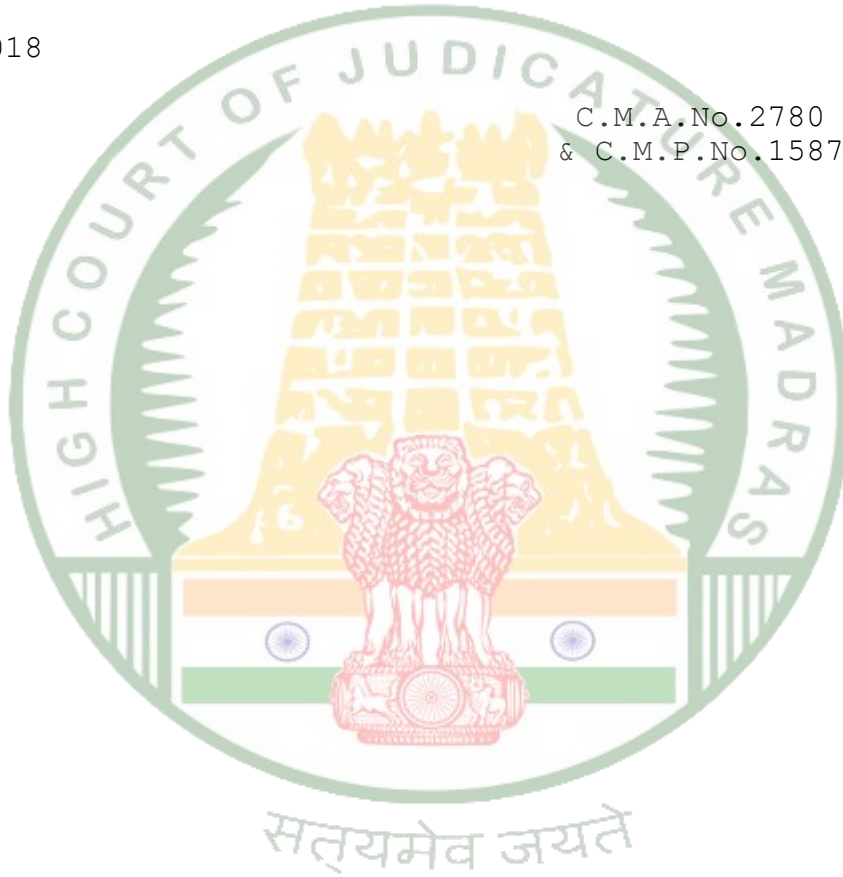
1. The Presiding Officer,
Motor Accident Claims Tribunal, Principal District Judge,
Cuddalore.

+lcc to MR.K.J.Sivakumar, Advocate SR.No.68005

PVS (CO)

sM:18.4.2018

C.M.A.No.2780 of 2017
& C.M.P.No.15875 of 2017



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