

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.01.2017

CORAM:

THE HON'BLE DR. JUSTICE S.VIMALA

Civil Miscellaneous Appeal No.33 of 2017
& C.M.P.No.326 of 2017

The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Trichy
... Appellant /
Respondent before the Tribunal

..Vs..

1. Amutha
2. Minor.Rajaganapathy
3. Minor. Sanjay
(Minors Represented by their next friend and
mother, Amutha)
4. Kaliyaperumal ... Respondents / claimants

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree, dated 08.01.2016, made in MCOP No.112 of 2014 on the file of the Motor Accident Claims Tribunal, Additional District and Sessions Judge and Chief Judicial Magistrate, Ariyalur.

For Appellant : Mr. D.Venkatachalam
For Respondents : Mr. Parthikannan

J U D G M E N T

The deceased Durai, aged 45, running a petty-shop, earning a sum of Rs.30,000/- per month, died in an accident, on 12.02.2014, while driving the motor cycle and having been hit by the bus belonging to the appellant.

2. The wife (P-1), sons (P-2 and P-3) and father (P-4) of the deceased filed the claim petition for compensation.

3. As against the claim made for a sum of Rs.38 lakhs, the Tribunal has passed an award for a sum of Rs.8,80,000/-. Branding the award as disproportionate, the Transport corporation has filed this Appeal.

3.1. The following is the break up details of the award:-

Loss of income of the deceased (Rs.7,500-2,500/- (1/3 rd deduction) =	
Rs.5,000/- x 2/3 x 12 x 13)	- Rs.7,80,000.00
Funeral expenses	- Rs. 10,000.00
Loss of love and affection (4 x Rs.10,000)	- Rs. 40,000.00
Consortium	- Rs. 50,000.00

	Rs.8,80,000.00

4. The first contention of the learned counsel for the appellant is that the First Information Report has been registered only as against the deceased, hence, for the fault committed by the deceased himself, the Legal Representatives cannot make a claim for compensation. It is contended that, in any event, the conduct of the deceased amounted to contributory negligence and hence, it requires reduction in the award.

4.1. This contention cannot be accepted, as the driver of the appellant has not been examined before the Tribunal to speak about the cause and mode of accident. The non-examination of the driver would compel the court to draw adverse inference against the appellant. In any event, the First Information Report is not a substantive piece of evidence and therefore, the availability of the First Information Report alone would not be sufficient to fix the guilt on the part of the deceased. The decision reported in Maya Azhagar and another v. Thangiah and another, reported in 2011 (2) TNMAC 391 would fortify this view and the dictum laid down reads as under:-

"13. It is also a settled principle of law that the first information report is not a substantive piece of evidence and it cannot be placed on pedestal higher than the statement on oath. The first information report could be used in criminal case for corroboration or for contradiction. It is lodged before an officer, who is in-charge of the police station to set the law in motion with regard to an incident, which takes place within his jurisdiction and nothing beyond that. This principle is laid down in Oriental Insurance Co. Ltd. v. Kamli, 2010 ACJ 1340 (MP)."

5. The next contention of the learned counsel appearing for the appellant is that the monthly income should not have been fixed at Rs.6,500/-, in the absence of proof for income and the decision reported in Syed Sadiq v. Deputy Manager, United India Insurance Co. Ltd., reported in (2014) 1 TNMAC 459 is relied upon.

5.1. This contention appears to be correct, but the fact remains that the future prospective increase in income has not been added in the monthly income of the deceased. Hence, both of them would offset each other.

6. Considering the overall facts and circumstances of the case, it transpires that the finding on negligence and finding on quantum are reasonable and it did not require any interference. Hence, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the CMP is also dismissed.

-s/d-
Assistant Registrar (CS-VIII)

True Copy

Sub-Assistant Registrar

To

1. Motor Accident Claims Tribunal,
Additional District and Sessions Judge and
Chief Judicial Magistrate, Ariyalur.

+1 CC to Mr. A.K. Kumarasamy, Advocate sr 2010
+1 CC to Mr.D. Venkatachalam, Advocate sr 1973

C.M.A.No.33 of 2017
& C.M.P.No.326 of 2017

SKS (CO)
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