

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2017

CORAM:

THE HONOURABLE Dr. JUSTICE S.VIMALA

C.M.A.No.362 of 2017

and C.M.P.No.2586 of 2017

The Managing Director,
Metropolitan Transport Corporation Ltd.
Pallavan House,
Anna Salai, Chennai - 2. ... Appellant / Respondent
versus

P.Venugopal (since deceased)
1. V.Lakshmiammal
2. M.Bhavani
3. R.Latha
4. V.Selvam
5. V.Mahesh ... Respondents/Claimants

Prayer : This Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and decree dated 17.12.2013 made in M.C.O.P.No.795 of 2012 on the file of the Motor Accident claims Tribunal (II Court of Small Causes), Chennai.

For Appellant : Mr.S.Sivakumar
For Respondents : Mr.K.Varadha Kamaraj

JUDGMENT

The original claimant P.Venugopal, aged about 63 years, a Proprietor of Provision Stores and Kerosene Seller, earning a sum of Rs.20,000/- per month, met with an accident on 22.01.2012 and sustained grievous injuries and he died on 06.03.2012. Originally, the said Venugopal filed a claim petition in M.C.O.P.No.795 of 2012 before the Motor Accident claims Tribunal (II Court of Small Causes), Chennai. After his death, his legal heirs were brought on record as petitioners in the claim petition and they claimed a sum of Rs.20,00,000/- as compensation.

2. As against the claim made, the Tribunal, after considering the oral and documentary evidence, has awarded a sum of Rs.12,48,000/- as compensation, payable with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit and the break-up details of which are as under:

Pecuniary loss	-	Rs. 4,20,000/-
Loss of consortium to the first petitioner	-	Rs. 50,000/-
Funeral expenses	-	Rs. 25,000/-
Loss of love and affection-	-	Rs. 60,000/-
Transport charges	-	Rs. 20,000/-
Extra nourishment	-	Rs. 25,000/-
Pain and sufferings	-	Rs. 1,00,000/-
Medical expenses	-	Rs. 5,48,000/-

Total	-	Rs.12,48,000/-

Challenging the liability as well as the quantum of compensation, the Transport Corporation has filed this appeal.

4. The learned counsel appearing for the appellant/Transport Corporation submits that the Tribunal has erred in holding that the driver of the Transport Corporation drove the bus in a rash and negligent manner and was responsible for the accident. It is further submitted by the learned counsel for the appellant that the deceased also contributed to the accident as is evident from the evidence available on record and, therefore, the award passed by the Tribunal is liable to be reduced.

5. A perusal of the award passed by the Tribunal reveals that on the side of the claimant, two witnesses were examined. P.W.2., Raja, who is the eyewitness to the accident, deposed that the deceased, driving the motorcycle came from East to West direction at the left extreme side of the road and at that time, the Transport Corporation's Bus came from behind in a rash and negligent manner and hit against the motor cyclist and the bus ran over on the legs of motor cyclist. P.W.1, wife of the deceased also affirmed the said facts and marked FIR (Ex.P1), registered under Sections 337 and 184 of the Motor Vehicles Act, 1988, against the driver of the bus and Ex.P3-charge sheet has also been laid. The driver of the Transport Corporation was examined as R.W.1. From the evidence of the driver, it is clear that the driver of the bus alone was the cause for the accident. Therefore, the Tribunal has come to the conclusion that the claimant has proved that the accident had occurred due to the rash and negligent driving of the driver of the transport corporation bus. Therefore, the contention of the learned counsel appearing for the appellant that the deceased should also be fastened with contributory negligence is liable to be rejected.

6. Insofar as the quantum of compensation is concerned, it was claimed in the claim petition that the deceased was aged 60 years and he was earning a sum of Rs.20,000/- p.m. at the time of accident. With regard to the age of the deceased, Ex.P4-postmortem certificate shows the age of the deceased as 60 years and Ex.P9-Medical records show the age of the deceased as 68 years. There being no proof to show the age of the deceased, the Tribunal fixed the age of the deceased at 64 years. With regard to the income of the deceased, there was no proof to show the income of the deceased. The Tribunal has fixed the monthly income of the deceased at Rs.7500/-, based on Ex.P8-copy of Retail licence, which shows that the deceased was an authorized dealer for kerosene in retail. In the light of the decision of the Hon'ble Supreme Court, reported in 2009 5 L.W. 561 (Sarala Varma & others vs. Delhi Transport Corporation and another), the Tribunal has adopted the appropriate multiplier of '7' and after deducting 1/3rd towards his personal expenses, having regard to the fact that the wife of the deceased alone is dependent and awarded a sum of Rs.4,20,000/- (Rs.7,500 x 12 x 7 - 1/3) towards loss of dependency. Having regard to the fact that the daughters and sons of the deceased have lost their father, towards loss of love and affection, a sum of Rs.60,000/- has been awarded to claimants 2 to 5; towards loss of consortium to the 1st petitioner, an amount of Rs.50,000/- has been awarded. The Tribunal, based on the medical bills-Ex.P9, awarded a sum of Rs.5,48,000/- towards medical expenses. The Tribunal, considering the nature of injuries and period of treatment, has awarded a sum of Rs.20,000/- towards transport expenses, Rs.1,00,000/- towards pain and sufferings (which would be to the benefit of the estate) Rs.25,000/- towards extra nourishment and Rs.25,000/- towards funeral expenses. In all, a sum of Rs.12,48,000/- has been awarded as compensation.

7. A careful perusal of the award reveals that the Tribunal, based on evidence and documents available before it, has awarded just and reasonable compensation and it cannot be said to be excessive. Hence, this Court is of the considered view that the compensation awarded, being based on documentary evidence, is liable to be confirmed.

8. Accordingly, the Civil Miscellaneous Appeal is dismissed, confirming the award dated 17.12.2013 passed in M.C.O.P.No.795 of 2012 by the Motor Accident claims Tribunal (II Court of Small Causes), Chennai. No costs. Consequently, connected miscellaneous petition is closed.

9. The appellant/Transport Corporation is directed to the deposit the entire amount of compensation as awarded by the Tribunal, less the amount, if any, already deposited, with interest at the rate of 7.5% p.a. from the date of petition till

the date of deposit to the credit of the claim petition, within a period of four weeks from the date of receipt of a copy of this Judgment. The claimants are entitled to the compensation as per the ratio of the apportionment made by the Tribunal. On such deposit being made, the Tribunal shall transfer the respective share of the claimants directly to their Bank Account through RTGS, within a period of two weeks thereafter.

Sd/-
Assistant Registrar (CS-vi)

//True Copy//

Sub Assistant Registrar

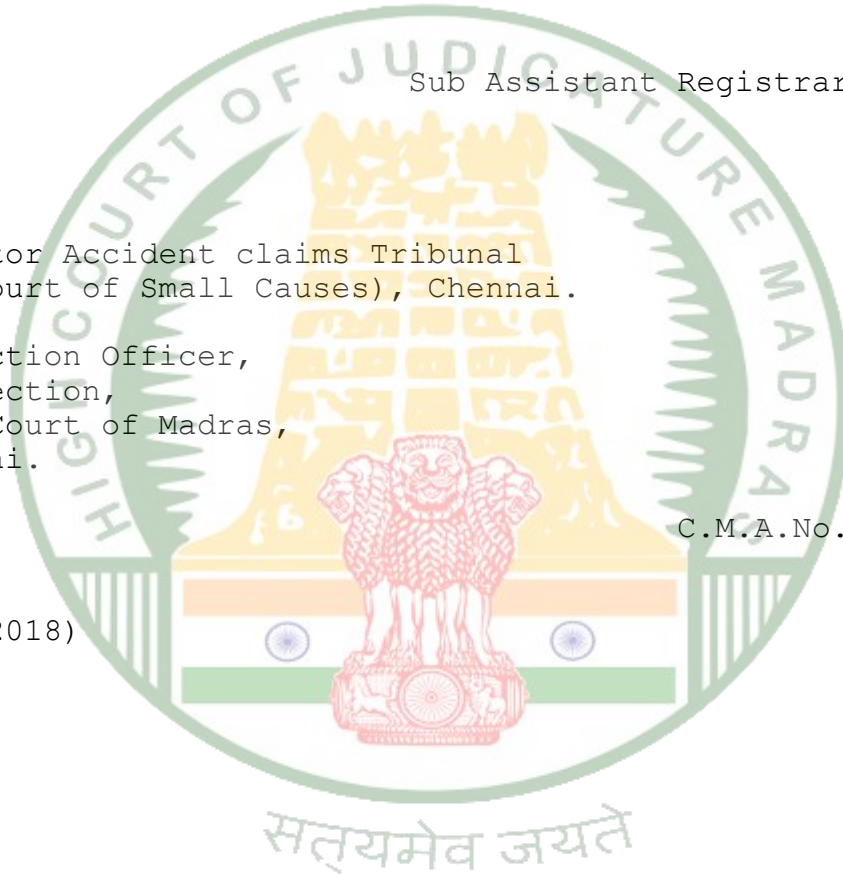
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To

1. The Motor Accident claims Tribunal
(II Court of Small Causes), Chennai.
2. The Section Officer,
V.R.Section,
High Court of Madras,
Chennai.

C.M.A.No.362 of 2017

GMR (CO)
TR(19/03/2018)



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