

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.03.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.No.779 of 2017
and
C.M.P.No.4147 of 2017

The Managing Director,
Tamil Nadu State Transport Corporation,
Sathuvachery,
Vellore Respondent/Appellant

vs.

1. Jayanthi
2. Deepa
3. Minor Dilip
4. P.Subramani
5. Santha Petitioner/Respondents

[Minor represented by mother and guardian Jayanthi-1st
respondent]

Civil Miscellaneous Appeal filed under Section 173 of Motor
Vehicles Act, 1988, against the Judgement and Decree in MCOP
No.126 of 2014 dated 28.10.2015 on the file of Motor Accident
Claims Tribunal, [District Judge, District Court-II],
Kancheepuram.

For Appellant : Mr.M.Murali
for Mr.S.Sairam

J U D G M E N T
[Order of the Court was made by S.MANIKUMAR, J.]

On 08.02.2014, about 7.00p.m., when the deceased Vadivel @
Vadivelan, was riding a bicycle on the extreme left side of the
main road in Kilambi Village, in which, one Prabhu was the
pillion rider, near Ayiramman Koil, a transport corporation bus
bearing Regn.No.TN72-N-1336, driven by its driver in a rash and
negligent manner, dashed the bicycle from behind and caused
grievous head and other bodily injuries to the bicyclist and he
died on the spot. In this regard, a case in Cr.No.56 of 2014,

under sections 279 and 304(A) IPC, was registered against the driver of the Transport Corporation bus bearing Regn.No.TN72-N-1336, on the file of Baluchettychathram Police Station.

2. Claiming that, at the time of accident, the deceased was a mason aged 35 years, legal representatives viz., wife aged 30 years, daughter aged 18 years, minor son, aged 14 years and parents, filed MCOP No.126 of 2014 on the file of Motor Accident Claims Tribunal, [District Judge, District Court-II], Kancheepuram, claiming compensation of Rs.15,00,000/-.

3. Transport Corporation has filed counter affidavit and disputed the manner of accident. Without prejudice, disputed the age, income of the deceased and the compensation claimed under various heads.

4. Before the claims tribunal, wife of the deceased examined herself as PW1 and eye-witness, one Kannaiyan was examined as PW2. Documents viz., Ex.P1, copy of First Information Report, Ex.P2, Copy of postmortem certificate, Ex.P3, Copy of death report, Ex.P4, copy of death certificate and Ex.P5, copy of legal heir certificate, have been marked on behalf of the claimants. No oral or documentary evidence has been adduced on behalf of the transport Corporation.

5. On evaluation of pleadings and evidence, the claims tribunal fixed negligence on the driver of the transport corporation bus bearing Regn.No.TN72-N-1336. By fixing the notional income of the deceased as Rs.6,000/-, quantified the compensation under the head loss of contribution to the family as Rs.12,15,000/-. In all, the tribunal awarded a sum of Rs.14,40,000/- with interest, at the rate of 7.5% per annum, from the date of claim till realisation, and costs and apportioned the same, as follows:

Loss of contribution to the family	: Rs.12,15,000/-
Loss of consortium	: Rs. 50,000/-
Loss of love and affection to children (Rs.50,000/- each)	: Rs. 1,00,000/-
Loss of love and affection to parents (Rs.25,000/- each)	: Rs. 50,000/-
Funeral and Transport expenses	: Rs. 25,000/-
Total	: Rs.14,40,000/-

6. Being aggrieved by the same, Transport Corporation is on appeal. Mr.M.Murali, learned counsel for the appellant Transport Corporation contended that the tribunal has erred in fixing a notional income of Rs.6,000/- and added 50% towards future prospects, and thereby, awarded excessive compensation under the head loss of contribution to the family. Except the above, no submission is made.

7. Heard the learned counsel for the appellant and perused the materials available on record.

8. As the challenge is restricted to quantum of compensation, there is no need to delve into the aspect of negligence and liability.

9. Perusal of the impugned award shows that though legal representatives have claimed that, as mason, the deceased earned a sum of Rs.15,000/- per month, in the absence of any proof, the tribunal, on an overall analysis of oral and documentary evidence, and in the absence of contra evidence, fixed the monthly income of the deceased as Rs.6,000/-. Further by adding 50% of the same (i.e. Rs.3,000/-) towards future prospects, deducting $\frac{1}{4}$ towards the personal and living expenses and applying '15' multiplier, awarded a sum of Rs.12,15,000/- as loss of contribution to the family.

10. Though Mr.M.Murali, learned counsel for the transport Corporation assailed the correctness of the award, on the grounds inter alia that the tribunal has awarded excess compensation under the head loss of contribution to the family by taking Rs.6,000/- as the monthly income, this Court is not inclined to accept the same, for the reason that for fixing the notional income and adding future prospects, the tribunal has considered the judgments of Hon'ble Supreme Court and this Court, viz., Sri Ramachandrappa Vs. The Manager, Royal Sundaram alliance Company Ltd., reported in 2011 (13) SCC 236, Syed Sadiq and others Vs. DM UIIC Ltd., reported in CDJ 2014 SC 044, Munna Lal and abother Vs. Vipin Kumar Sharma and others, reported in CDJ 2015 SC 476 and Universal Sompo General Insurance Co. Ltd., Mumbai Vs. Uma and others reported in CDJ 2015 MHC 6642 (DB). Further, perusal of the award shows that the tribunal has not awarded any compensation under the head loss of estate and conventional damages. Award under the head loss of consortium to the wife aged 30 years, and loss of love and affection to children and parents, is less.

11. In view of the above discussion, we are of the view that there is absolutely no merit in the Civil Miscellaneous Appeal and the same is dismissed. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

12. Consequent to the dismissal of the appeal, appellant-Tamilnadu State Transport Corporation, Vellore, is directed to deposit the entire award amount with interest at the rate of 7.5% per annum, from the date of claim and costs, of this appeal, less the statutory deposit, to the credit of MCOP No.126 of 2014 on the file of Motor Accident Claims Tribunal, [District Judge, District Court-II], Kancheepuram, within a

period of four weeks from the date of receipt of a copy of this order.

13. Respondent No.3 was a minor at the time of filing of the claim petition. On such deposit being made, except the minor, the respondents/claimants 1, 2, 4 and 5 are permitted to withdraw their share, as apportioned by the tribunal, by making necessary applications. Share apportioned to the minor/respondent No.3, shall be in the bank deposit till he attains majority. Interest accruing on the share of the minor shall be paid to the 1st respondent/mother of the minor once in three months, till he attains majority. On attainment of majority, he shall file necessary applications for withdrawal.

-s/d-

Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

To

- 1.The Motor Accident Claims Tribunal,
[District Judge, District Court-II], Kancheepuram.
- 2.The Section Officer,
VR Sectrion,
High Court,
Chennai.

C.M.A.No.779 of 2017
and
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AD(CO)
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