

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.03.2017

CORAM :

THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

CMA.No.960 of 2017

The Managing Director
Tamil Nadu State Transport
Corporation, Railway Station Road,
Kumbakonam Munsif and Taluk,
Thanjavur District ... Appellant/2nd Respondent

Vs.

1. M.Chithra
2. Minor M.Balakrishnan
3. Minor M.Anushuya
Minors represented by their mother
4. G.Valli
5. The Branch Manager
National Insurance Company Limited
Having Office at No.2, Road,
Myladuthurai Town and Taluk,
Thanjavur District ... Respondents/Petitioners
1 to 4/1st Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award dated 17.06.2016 made in M.C.O.P.No.320 of 2014 on the file of the Motor Accident Claims Tribunal, Additional Subordinate Judge, Myladuthurai.

For Appellant : Mr.D.Venkatachalam

For Respondents 1 to 4 : Mr.T.Gopinath

JUDGMENT

This appeal arises against the order passed in M.C.O.P.No.320 of 2014 on the file of the Motor Accident Claims Tribunal, (Additional Subordinate Judge) Myladuthurai.

2. This is a case of fatal injury. On 15.09.2014 at about 2.00 p.m., while the deceased was riding a van near Panchayat Board Office on the Kalakasthi Nathapuram Main Road from East to West direction, the TNSTC bus bearing Registration No.TN-49-N-1944, came in a rash and negligent manner from the opposite direction and collided with each other and caused accident, due to which, he sustained fatal injuries. Hence, the claimants approached the Tribunal with a claim for Rs.40,00,000/-, as compensation, against which, the Tribunal has passed an award for Rs.16,74,200/- payable with interest @ 7.5% per annum on the following heads.

Heads	Amount (in Rs.)
Loss of earning	14,74,200/-
Love and Affection for 1 to 3 claimants	1,50,000/-
Love and Affection for fourth claimant	25,000/-
Funeral Expenses, Transportation Charges and damages to cloth	25,000/-
Total	16,74,200/-

3. Heard the learned counsel for the Appellant/Transport Corporation and the learned counsel for the respondents 1 to 4-claimants and perused the materials available on record.

4. The learned counsel appearing for the appellant submitted that the accident occurred only due to the negligence on the part of the deceased, who drove the van in a rash and negligent manner and dashed against the bus by crossing the centre line of the road, which has been proved by the appellant-Transport Corporation through P.W.1-driver. Hence, contributory negligence has to be fixed against the deceased.

5. On a perusal of the award, which has been passed taking into consideration the oral and documentary evidence, it is seen that the Tribunal has rightly fixed the negligence on the part of the driver of the bus belonging to the appellant/Transport Corporation.

6. Further, regarding the quantum, a perusal of the award would go to show that though the Tribunal has awarded a sum of Rs.1,75,000/- under the head "Love and affection" for the mother and minor respectively, the same is now modified to Rs.2,75,000/- (Rs.2,00,000/- for claimants 1 to 3 and Rs.75,000/- for the fourth claimant). It is seen that the deceased was stated to be the owner of the van and was earning Rs.6,000/- per month. Since there is no proof in support of the avocation of the deceased, the monthly income is fixed at Rs.9,000/-. However, the Tribunal has fixed his monthly income at Rs.9,000/-, after making provision for his personal expenses at 1/4th, and it applied a multiplier of 14 based on the judgment of the Supreme Court in Sarala Varma & Other Vs. Delhi Transport Corporation & another reported in [2009(2) TNMAC 1]: [2009 ACJ 1298] and arrived at a total dependency of Rs.14,74,200/- under the head "loss of income". There is no document filed by the claimants to prove the age and income of the deceased and the Tribunal has awarded a sum of Rs.14,74,200/-, which is excessive. Considering the facts and circumstances of the case, this Court is inclined to reduce the Loss of Dependency from Rs.14,74,200/- to Rs.11,46,000/-, by taking into consideration the monthly income at Rs.7,000/- plus 30% of future prospects (9,100 x 12 x 14 x 3/4).

7. Under the head "Loss of Consortium", nothing was awarded to the wife of the deceased. Hence, this Court feels it appropriate to award compensation under the head 'Loss of consortium' to the wife (1st claimant) and accordingly, a sum of Rs.1,00,000/- is awarded towards the same. Further, with regard to the funeral expenses and transportation expenses, the Tribunal awarded totally Rs.25,000/-, which is hereby enhanced to Rs.35,000/- (Rs.25,000/- for funeral expenses and Rs.10,000/- for transportation expenses). Accordingly, the compensation awarded by the Motor Accident Claims Tribunal is revised as follows:-

Heads	Amount (in Rs.)
Loss of earning	11,46,600/-
Love and Affection for 1 to 3 claimants	2,00,000/-
Love and Affection for fourth claimant	75,000/-
Funeral Expenses	25,000/-
Transportation Charges	10,000/-
Loss of Consortium	1,00,000/-
Total	15,56,200/-

8. In the result, this appeal is partly allowed and Award of the Tribunal is reduced from Rs.16,74,200/- to Rs.15,56,200/- with 7.5 % interest per annum from the date of claim petition till the date of payment. The excess compensation, if any paid by the appellant/Insurance Company, shall be withdrawn by them, after adjusting the compensation now awarded. No costs.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal,
Additional Subordinate Judge,
Myladuthurai.

2. The Record Keeper,
VR Section,
High Court, Madras.

+1cc to Mr.D.Venkatachalam, Advocate, S.R.No.18623

+1cc to Mr.T.Gopinath, Advocate, S.R.No.19350