

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.04.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A No.353 of 2010

in

C.M.P No.1 of 2010

The Branch Manager,
Tamil Nadu State Transport Corporation Ltd.,
Salem. Appellant/Respondent

Vs.

Hathunbi Respondent/Petitioner

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award made in MCOP No.126 of 2007 dated 17.08.2009 on the file of Motor Accidents Claims Tribunal (Sub Court), Chidambaram.

For Appellant : Mr.D.Venkatachalam
For R 1 : Mr.A.Murugan

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant/Transport Corporation against the award, dated 17.08.2009, made in M.C.O.P.No.126 of 2007, passed by the Motor Accidents Claims Tribunal (Sub Judge), Chidambaram.

2.The appellant is the respondent and the respondent is the claimant in MCOP No.126 of 2009, on the file of the Motor Accident Claims Tribunal (Sub Court), Chidambaram. The respondent filed a claim petition against the appellant, claiming a sum of Rs.40,00,000/- as compensation for the death of her husband.

3.According to the respondent/claimant, on 08.11.2004 at 8.35 a.m., one Navabjohn, the husband of the respondent along with the respondent as pillion rider, was riding the motor vehicle bearing Registration No.PY-01/T-8569 on Hosur-Krishnagiri Road, at that time, a bus bearing Registration No.TN-27-N-1202 belonging to the appellant driven by it's driver in a rash and negligent manner and dashed against the motor cycle. Due to the impact, the husband of the respondent sustained grievous head injury and immediately, he was taken to

Government Hospital, Hosur and they referred to NIHMN's Hospital Hosur and subsequently, shifted to St. Johns Hospital, Bangalore and he died on 09.11.2004. A complaint was given against the driver of the bus before the Transport Investigation Division at Kirshnagiri Police Station and a case was registered in Crime No.231/2004 under Section 304(A) I.P.C. At the time of accident, the deceased was 36 years old and was running Transport Company and also running bakery at Hosur and was earning a sum of Rs.30,000/- per month. In the above said accident, the respondent also sustained grievous injuries and she has also filed a separate claim petition.

4. On contest, the Tribunal, considering the oral and documentary evidence let in, found that the accident occurred only due to the rash and negligent driving of the driver of the appellant-Transport Corporation bus and awarded the compensation of Rs.9,95,000/- along with interest at 7.5% p.a. from the date of claim petition till the date of realisation. Aggrieved over the same, the present Civil Miscellaneous Appeal has been filed.

5. Heard Mr.D.Venkatachalam, learned Counsel for the appellant-Transport Corporation and Mr. A.Murugan, learned Counsel for the respondent/claimant and perused the materials available on record.

6. The questions to be decided in this appeal are as follows:

"1. Whether the accident had occurred only due to the rash and negligent driving of the driver of the bus belonging to the appellant.

2. Whether the compensation awarded by the Tribunal is excessive."

7. Before the Tribunal, the respondent examined herself as P.W.1 and eye witness was examined as P.W.2 and 9 documents were marked as Ex.P.1 to P.9. On side of Appellant, the driver of the bus was examined R.W.1 and no documents were marked.

8. Considering the oral and documentary evidence and Ex.P1, the Tribunal came to the conclusion that the accident occurred only due to the rash and negligent driving of the driver of the appellant-Transport Corporation bus and RW1 driver of the bus has appreciated the facts placed before the Tribunal in a proper and perspective manner and held that the accident occurred only due to the rash and negligent driving of the driver of the bus belonging to the appellant and there is no infirmity in the said finding.

9.As far as the quantum of compensation is concerned, the respondent/claimant deposed that the deceased was running Transport Company and bakery and was earning a sum of Rs.30,000/- p.m. However, the respondent has not produced any evidence to substantiate her claim. Further, the respondent admitted that the deceased sold the Transport Company and started bakery at Hosur. Considering all these facts, the Tribunal has fixed the notional income of the deceased at Rs.7,500/- p.m.. In the absence of any document, the notional income was fixed by the Tribunal is on the higher side. Therefore, the same has to be fixed to Rs.4,500/- and after deducting 1/3rd towards personal expenses, the amount comes to Rs.3,000/- (Rs.4,500-1,500/-). The Tribunal has applied the multiplier '16'. At the time of accident, the deceased age was 36 years. As per the judgment of the Hon'ble Apex Court in reported in 2009 (2) TN MASarla Verma v. Delhi Transport CorporationC 1 (SC), the correct multiplier is only '15' and hence, the loss of income is modified as follows:-
$$\text{Rs.3,000} \times 12 \times 15 \times 100/100 = \text{Rs.5,40,000/-}$$

In all other respects, the award of the Tribunal is confirmed. The rate of interest awarded by the Tribunal at 7.5% per annum remains unaltered.

10.In the result,

(i)This Civil Miscellaneous Appeal is partly allowed reducing the award of the Tribunal from Rs.9,95,000/- to a sum of Rs.5,75,000/-;

(ii) The respondent/claimant is entitled to the said compensation;

(iii) The respondent/claimant is directed to submit his Savings Bank Account Details along with the copies of his passbook to the Tribunal forthwith;

(iv) The appellant-Transport Corporation is directed to deposit the award amount now modified by this Court along with accrued interest and costs, less the amount deposited, if any, to the credit of M.C.O.P.No.126 of 2007 on the file of the on the file of the Motor Accident Claims Tribunal/Sub Judge,Chidambaram, within a period of eight weeks from the date of receipt of a copy of this judgment; and

(v) On such deposit, the Tribunal is directed to transfer the said amount of the respondent/claimant directly to their Personal Savings Bank Account Numbers, through RTGS/NEFT system, after getting their Account Details, within a period of two weeks thereafter.

and

(vi) In the facts and circumstances of the case, there shall be no order as to costs. Consequently, connected miscellaneous petition is also closed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

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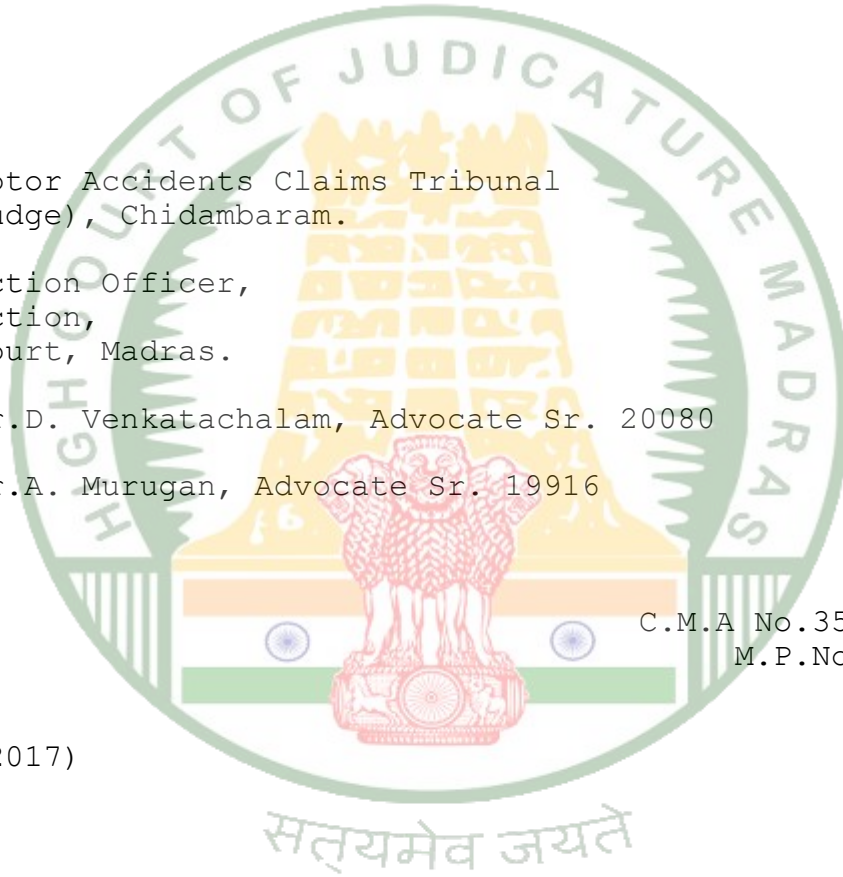
1. The Motor Accidents Claims Tribunal
(Sub Judge), Chidambaram.
2. The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.D. Venkatachalam, Advocate Sr. 20080

+1cc to Mr.A. Murugan, Advocate Sr. 19916

C.M.A No.353 of 2010 &
M.P.No.1 of 2010

RJ (CO)
VR(24/04/2017)



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