

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 27.02.2017

C O R A M

The Honourable **Mr.Justice S.Manikumar**
and

The Honourable **Mr.Justice M.Govindaraj**

Civil Miscellaneous Appeal No.727 of 2017
and

C.M.P. No.4034 of 2017

The Managing Director
Tamil Nadu State Transport Corporation Ltd.
Villupuram

... Appellant

Vs

1.Anbarasi
2.Jagan Babu
3.Minor Jagadeesan
4.Minor Tamilzh Iniyan
(Minors 3 and 4 rep by guardian
mother Anbarasi)
5.Valambaal
6.Thangarasu

... Respondents

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 08.09.2015, passed in M.C.O.P.No.71 of 2014, by the Motor Accident Claims Tribunal, Cuddalore at Vridhachalam (III Additional District Judge, Cuddalore at Vridhachalam).

For Appellant : Mr.P.Paramasivadoss

J U D G M E N T
(Made by S.Manikumar, J.)

Challenging the quantum of compensation of Rs.14,00,000/- awarded in MCOP No.71 of 2014 dated 20.12.2013, by the Motor Accident Claims Tribunal (Chief Judge, Court of Small Causes), Chennai, to the legal representatives of the deceased Jaganathan, the Managing Director, Tamil Nadu State Transport Corporation, Villupuram, is on appeal.

2. Case of the claimants/respondents is that on 01.02.2014, at 17.30 hours, when the deceased Jaganathan was walking towards south from Kollanthankurichi bus stop on Vridhachalam - Andimadam Main Road, and when he was proceeding opposite to one Arumugam's land, a bus bearing Regn. No.TN-23 N-2447 belonging to the appellant/transport corporation, driven by its driver, in a rash and negligent manner, hit him. He sustained grievous injuries and on 03.02.2014, succumbed to the same in Jipmer Hospital, Pondicherry.

3. PW1, wife of the deceased deposed about the manner of accident, as well as the negligent act on the part of the driver of the appellant/transport corporation bus. Ex.P1 is the FIR registered against the driver of the bus. Ex.P3 is the Motor Vehicle Report and

one Mr.K.Duraikannu, eyewitness has been examined as PW2, who has deposed that the accident was due to rash and negligent driving of the bus driver.

4. The appellant/transport corporation did not deny the accident, but contended that the accident was due to negligent act of the deceased, who tried to get in to a moving bus, fell down and invited the accident. RW1, driver of the bus has been examined, who has deposed that the deceased got into the front entrance of the moving bus, fell down and the back wheel of the bus ran over him and that though the accident was due to the negligence of the deceased.

5. Legal representatives have contended that at the time of accident, the deceased, a coolie earned Rs.15,000/- per month. Since no documentary evidence was produced to substantiate the avocation and income of the deceased and at the time of accident, he was aged 39 years, the Tribunal observed that the deceased would have earned at least Rs.200/- per day and fixed the income as Rs.6,000/-. Having regard to the age of the deceased 39 years as per the decision of the Hon'ble Apex Court in ***Smt.Sarla Varma & Others vs. Delhi Transport Corporation and another*** reported in **2009 (5) LW-651**, 50% of the income was added

towards future prospects and thus, the income of the deceased was fixed as Rs.9,000/- per month for the purpose of compensation under the head loss of contribution to the family. The deceased is survived by wife, three sons (2 of them are minor), and parents and hence the Tribunal deducted 1/4th towards the personal expenses of the deceased. Taking Rs.6,750/- as multiplicand, the Tribunal applied multiplier 15, and thus arrived at the compensation, as here under:

Loss of future estate Rs.6750 x 12 x 15	: Rs.12,15,000/-
Loss of consortium to the first Claimant	: Rs. 50,000/-
Loss of love and affection to respondents 2 to 6 each Rs.25,000/-	: Rs. 1,25,000/-
Funeral Expenses	: Rs. 10,000/-

	: Rs.14,00,000/-

6. Though the quantum of compensation is challenged, as higher, after going through the judgment and award, we could deduce that the Tribunal has awarded lesser compensation under the heads loss of consortium, love and affection, funeral expenses and loss of estate. The Tribunal has not awarded any compensation for transport and conventional damages. Had the Tribunal followed

the decisions of the Hon'ble Apex Court in ***Sarla Verma and others vs. Delhi Transport Corporation and another*** reported in ***2009 (2) TNMAC 1 (SC)***, ***Reshma Kumari & Ors. V. Madan Mohan & Anr.*** reported in ***(2013) 9 SCC 65***, ***Reshma Kumari, Rajesh & Others Vs. Rajbir Singh & Others*** reported in ***(2013) 9 SCC 54 = 2013 (2) TN MAC 55 (SC)***, in letter and spirit compensation to be awarded under the above heads would be much more. Finding fixing negligence on the driver of the bus cannot be said to be faulty, as there is corroboration to the version of the claimants. In view of the above, we are not inclined to interfere with the same.

7. Accordingly, civil miscellaneous appeal is dismissed. The appellant/transport corporation is directed to deposit the entire award amount, with proportionate interest and costs, to the credit of MCOP No.71 of 2014 on the file of the Motor Accident Claims Tribunal, Cuddalore at Vriddhachalam (III Additional District Judge, Cuddalore at Vriddhachalam), within a period of four weeks from the date of receipt of a copy of this judgment. Share of the minors, namely appellants 2 and 3 herein, is directed to be deposited in any one of the Nationalised Banks under reinvestment scheme, proximate to the residence of the appellants 3 and 4/claimants 3 and 4 and renewable thereafter. Appellant No.1/mother of the

minor children is permitted to withdraw interest once in three months, till the minor children attain majority. The Tribunal shall affix the details of this judgment in the notice board mentioning the names of the parties, MCOP number and the disposal of the appeal. Tribunal is directed to disburse the compensation amount, only, after due verification and identity of the claimants/respondents. There should be strict compliance.

(S.M.K.,J) (M.G.R.,J)
27.02.2017

Index : yes/No
website : Yes/No.
ASR

To
Motor Accident Claims Tribunal, Cuddalore at Vridhachalam
(III Additional District Judge, Cuddalore at Vridhachalam).

- **To affix the details of the order, as stated supra.**

S.MANIKUMAR,J

a n d

M.GOVINDARAJ,J

asr.

C.M.A.No.727 of 2017

27/2/2017

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