



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.11.2017

CORAM:

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THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN
C.M.A. (MD) .No.118 of 2015

- 1.N.Petchiammal
- 2.N.Prema
- 3.Minor.N.Sankareeswari

(3rd petitioner is represented by her mother
and next friend the 1st petitioner)

4.C.Piramu ... Appellants/Petitioners

Vs.

The Managing Director,
Tamil Nadu State Transport Corporation Limited,
19, Thiruvananthapuram Road,
Vannarpet, Tirunelveli.

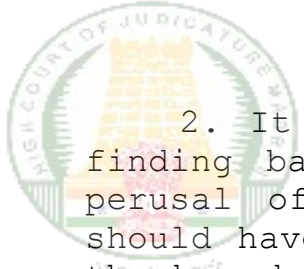
... Respondent/Respondent

PRAYER : This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicle Act, against the Judgment and decree in M.C.O.P No.98 of 2012, dated 30.11.2012 on the file of the Motor Accident Claims Tribunal, II Additional District Court, Thoothukudi.

For Appellants	: Mr.S.Siva Thilakar
For Respondent	: Mr.P.Prabhakaran

JUDGMENT

The claimants have filed this appeal challenging the dismissal of their claim petition by the Tribunal. The deceased Nagamani was riding a motor-cycle on the left side of the Thoothukudi-Chakkrapatti Main Road. The said road has double bend. The bus belonging to the respondent Transport Corporation was coming in the opposite direction. The accident took place near the bend. The two-wheeler coming in the opposite direction hit the bus on the front right side. From the manner in which the accident had occurred, one can come to a safe conclusion that both the rider as well as the bus driver were at fault. It is true that FIR in this case was registered against the deceased and the final report was closed on the ground that the accused was passed away. The Tribunal went solely by registration of FIR against the deceased and dismissed the petition.



2. It is well settled that the tribunal ought to render its finding based on the material available before it. On a mere perusal of the rough sketch marked in this case, the tribunal should have fixed the negligence on the deceased rider along with the bus driver. The entire negligence should not have been fixed on the deceased rider. Therefore, I am constrained to set aside the order dated 30.11.2012 on the file of the Motor Accident Claims Tribunal, II Additional District Court, Thoothukudi.

3. Insofar as the issue of quantum is concerned, the deceased was aged 40 years at the time of accident. He was an agriculturist. But no income proof was furnished. Therefore, the notional income per month can be fixed at Rs.4,500/-. There were five persons in the family. Therefore only one fourth deduction can be made. The notional monthly income available for the family would be Rs.3,375/-. Hence, the pecuniary loss by adopting multiplier 14, would come to Rs.3375x12x14=Rs.5,67,000/-. The compensation payable to the claimants under other heads will have to be reworked as under:-

S.No	Description	Amount awarded by this Court (Rs.)
1.	Pecuniary loss (3375x12x14)	Rs.5,67,000
2.	loss of consortium for the wife	Rs.40,000
3.	Love and affection for the remaining three claimants	Rs.1,50,000
4.	Loss of estate	Rs.15,000
5.	For funeral expenses	Rs.15,000
6.	For Transportation	Rs.5,000
7.	Total	Rs.7,92,000

4. This Court fixes 60% negligence on the bus driver and 40% negligence on the deceased rider. Since 40% negligence is fixed on the deceased, the compensation payable is quantified to Rs.4,75,200/-.

5. The respondent Corporation is liable to pay the said sum of Rs.4,75,200/- with interest at 7.5% per annum and cost from the date of petition till the date of realization within a period of twelve weeks from the date of receipt of a copy of this order, less the amount already deposited, if any. On such deposit the claimants are entitled to withdraw the entire amount as apportioned by the Tribunal, less the amount already withdrawn by them, if any, by filing proper application before the Tribunal.



6. The Civil Miscellaneous Petition is partly allowed. No costs.

Sd/-

Assistant Registrar(w)

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/True Copy/

Sub Assistant Registrar

To

1. The Motor Accident Claims Tribunal,
II Additional District Judge,
Thoothukudi
2. The Managing Director,
Tamil Nadu State Transport Corporation Limited,
19, Thiruvananthapuram Road,
Vannarpet, Tirunelveli.

+1cc to Mr.P.Prabhakaran, Advocate Sr.No.85062

+1cc to Mr.S.Siva Thilakar, Advocate Sr.No.85259

KMI

VB/KKR/SAR3/02/01/2018/3P/5C

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