



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.03.2017

CORAM:

**THE HONOURABLE MS.JUSTICE V.M.VELUMANI**

**C.M.A. (MD) No.221 of 2017**

**in**

**C.M.P. (MD) No.2600 of 2017**

WEB COPY

The Managing Director,  
Tamil Nadu State Transport Corporation,  
Kumbakonam Division,  
Karaikudi.

... Appellant/ Respondent

Vs.

1.Rajammal  
2.Pandiselvam  
3.Senthil  
4.Pathakumar  
5.Solaichi

... Respondents 1 to 5  
Petitioners 1 to 5

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P.No.228 of 2012, dated 28.09.2012 on the file of the Motor Accident Claims Tribunal - cum - Additional District Court, Pudukottai.

For Appellant : Mr.V.Sriram  
for D.Sivaraman

\* \* \* \* \*

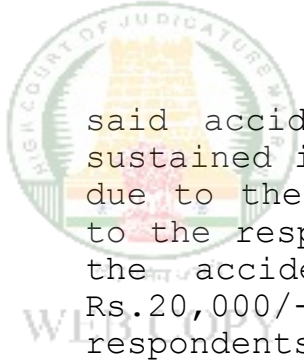
**JUDGMENT**

Being aggrieved over the award passed by the Motor Accident Claims Tribunal-cum-Additional District Court, Pudukottai in M.C.O.P.No.228 of 2012, the Transport Corporation has filed the present appeal.

2.The appellant Transport Corporation is the respondent, the respondents 1 to 5 are the claimants in MCOP.No.228 of 2012. The respondents 1 to 5/claimants filed the claim petition in MCOP.No.228 of 2012 claiming a sum of Rs.10,00,000/- (Rupees Ten Lakhs only) as compensation for the death of one Pazhani @ Pazhanisamy, husband of the first respondent, father of the respondents 2 to 4 and son of the sixth respondent. 6<sup>th</sup> son of the fifth respondent, husband of the first respondent and father of the respondents 2 to 4.

**3.Facts of the case:-**

According to the respondents 1 to 5, on 07.05.2008 at 04.00 p.m., the deceased was riding the motor cycle bearing Registration No.TN-07-AM-1892 and the third respondent was pillion rider, and when the deceased was overtaking another vehicle, the bus bearing Registration No.TN-63-N-0934 belonging to the appellant was driven by the driver of the appellant in a rash and negligent manner and dashed against the motor cycle driven by the deceased. Due to the



said accident, the third respondent, who was the pillion rider sustained injuries and the rider of the motorcycle died on the spot, due to the multiple injuries sustained in the accident. According to the respondents 1 to 5, the deceased was 46 years at the time of the accident and was working as Architect and was earning Rs.20,000/- (Rupees Twenty Thousand only) per month. The respondents 1 to 5 are the dependants. Therefore, they filed the claim petition against the appellant claiming a sum of Rs.10,00,000/- (Rupees Ten Lakhs only) as compensation for the death of the deceased. The third respondent/pillion rider also sustained multiple injuries in the said accident and he has also filed a separate claim petition for the injuries sustained by him in the accident claiming a sum of Rs.5,00,000/- (Rupees Five Lakhs only) as compensation.

4. In both the claim petitions, the appellant filed separate counter statements and denied all averments made by the respondents and submitted that the accident did not occur due to the rash and negligent driving of the driver of the appellant. On the other hand, the deceased invited the accident and due to his negligence only, the accident occurred. The respondents 1 to 5 have to prove the age and income of the deceased.

5. Before the Tribunal, the third respondent was examined as P.W.1 and the second respondent was examined as P.W.2 and one Dr. Ravikumar was examined as P.W.3 and marked 8 documents as Exs. P.1 to P.8. The appellant did not let in any oral and documentary evidence.

6. Both the claim petitions were taken up together and a joint trial was conducted and common order was passed.

7. The Tribunal, considering the pleadings, oral and documentary evidence, Ex.P1-F.I.R., evidence of P.W.1-eyewitness, came to the conclusion that the accident occurred only due to the rash and negligent driving of the driver appellant and there was no negligence on the part of the deceased. Considering the age and the nature of work done by the deceased before his death, the Tribunal awarded a total sum of Rs.4,84,000/- (Rupees Four Lakhs Eighty Four Thousand only) as compensation.

8. Aggrieved against the said award, the Appellant/transport corporation has filed the present Civil Miscellaneous Appeal.

9. The appellant has filed the present appeal challenging only the quantum of compensation to the extent of Rs.84,500/- (Rupees Eighty Four Thousand and Five Hundred only) as seen from the Memo of valuation.

10. The learned Counsel for the appellant submitted that the Tribunal erred in fixing the monthly income of the deceased at Rs.3,500/- (Rupees Three Thousand Five Hundred only) per month which



is on higher side and the Tribunal has not applied the correct multiplier. The amount of Rs.50,000/- (Rupees Fifty Thousand only) towards Love and affection is also highly excessive.

11. I have heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondents 1 to 5 and perused the materials available on record.

12. From the materials available on record, it is seen that in the absence of documents to prove the income of deceased that he was earning Rs.10,000/- (Rupees Ten Thousand only) per month. The Tribunal has fixed notional income of the deceased at Rs.3,500/- (Rupees Three Thousand Five Hundred only) which is not on higher side as claimed by the learned Counsel for the appellant. The respondents have stated that age of deceased was 46 years, but the Tribunal fixed at 50 years based on the post mortem report. As per the judgment reported in **2009(2)TN MAC 1 (SC) Sarla Verma v. Delhi Transport Corporation**, the correct multiplier is 13. The Tribunal deducted  $1/4^{\text{th}}$  from the monthly income and awarded a sum of Rs.4,09,500/- (Rupees Four Lakhs Nine Thousand Five Hundred only) towards the loss of income and awarded a sum of Rs.10,000/- (Rupees Ten Thousand only) for loss consortium and a sum of Rs.50,000/- to the respondents 1 to 5 for loss of love and affection. A sum of Rs.10,000/- (Rupees Ten Thousand only) toward loss of estate and a sum of Rs.5,000/- (Rupees Five Thousand only) towards funeral expenses, were awarded.

13. The compensation awarded by the Tribunal is just compensation and the appellant did not let in any evidence to disprove the case and same is not excessive. The appellant has not made out any case for modifying the judgment by reducing the compensation awarded by the Tribunal.

14. In the result, the Civil Miscellaneous Appeal is dismissed and compensation awarded by the Tribunal is confirmed. The appellant/Transport Corporation is directed to deposit the entire award amount to the credit of M.C.O.P.No.228 of 2012, on the file of the Motor Accidents Claims Tribunal-Additional District Court, Pudukottai, less the amount already deposited, if any, along with interest at the rate of 7.5% per annum from the date of petition till date of realisation and proportionate costs, within a period of six weeks from the date of receipt of a copy of this Judgment. On such deposit, the Tribunal is directed to transfer the award amount to the Personal Savings Bank Account Number of the claimants, after getting their Account Details, within a period of two weeks thereafter. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (CS-III)

/True copy/



To

1.The Motor Accident Claims Tribunal - cum -  
Additional District Court,  
Pudukottai.

2.The Record Keeper,  
V.R.Section,  
Madurai Bench of Madras High Court,  
Madurai.

+1 CC to M/s.D.SIVARAMAN, Advocate, SR No. 16396  
AM/MRN

PSM/MR/SAR3/21.04.2017/4P/4C

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