



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.03.2017

CORAM:

WEB COPY

**THE HONOURABLE MS.JUSTICE V.M.VELUMANI****C.M.A(MD) No.225 of 2017****and****C.M.P(MD)No.2620 of 2017**

The Managing Director,  
Tamil Nadu State Transport Corporation,  
Madurai Division-3,  
Ranithottam Depot,  
Nagercoil.

.. Appellant/Respondent

vs.

1.Vijayakumari

2.Viswambaran

3.Minor.Vijithra

4.Minor.Vishnu

(The Respondents 3 & 4 are minors  
represented through their mother  
and guardian the 1<sup>st</sup> respondent)

.. Respondents 1 to 4/Petitioners

5.Brightson

(The 5<sup>th</sup> respondent is the driver of the  
appellant and given up)

6.Sahayadhasan

7.The Branch Manager,

Bajaj Alliance General Insurance Company Limited.,

K.M.Building,

K.P.Road,

Nagercoil.

.. Respondents 5 to 7/

Respondents 1,3 &amp; 4

Prayer: The appeal filed under Section 173 of Motor Vehicle Act, 1988, against the award and decree made in M.C.O.P.No.18 of 2010, dated 16.03.2012 on the file of the Motor Accident Claims Tribunal/Sub Court, Kuzhithurai.

For Appellant

: Mr.P.Prabhakaran

**JUDGMENT**

Being aggrieved over the award passed by the Motor Accident Claims Tribunal-Sub Court, Kuzhithurai in M.C.O.P.No.18 of 2010, dated 16.03.2012, the Transport Corporation has filed the present appeal.

2.The appellant Transport Corporation is the second respondent in M.C.O.P.No.18 of 2010, on the file of the Motor Accident Claims Tribunal-Sub Court, Kuzhithurai. The respondents 1 to 4 are the claimants, the fifth respondent is the driver of the bus belonging to the appellant and the sixth respondent is the owner of the two-wheeler. The respondents 1 to 4 filed the claim petition in M.C.O.P.No.18 of 2010, claiming a sum of Rs.10,00,000/- (Rupees Ten Lakhs only) as compensation for the death of the son of the respondents 1 & 2 and brother of the respondents 3 & 4 in the accident that occurred on 29.06.2009. By the award, dated 16.03.2012, the Tribunal awarded a sum of Rs.6,50,500/- (Rupees Six Lakhs Fifty Thousand Five Hundred only) as compensation.

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

According to the respondents 1 to 4, on 29.06.2009 at about 4.30 p.m., while the deceased was riding the motorcycle bearing Registration No.TN-74-W-6998 belonging to the third respondent on Vettuventhi Thenkaipattinam Road slowly and cautiously, and at that time, the driver of the bus belonging to the appellant drove the bus in a rash and negligent manner and dashed against the deceased and caused accident. Due to the said impact, the deceased died on the spot. The deceased was aged about 19 years at the time of accident and he was working as Mason and earning a sum of Rs.6,000/- per month. The FIR was registered against the fifth respondent, who is the driver of the appellant. The accident was occurred only due to the rash and negligent driving of the driver of the bus belonging to the appellant. Therefore, they filed the claim petition, claiming a sum of Rs.10,00,000/- (Rupees Ten Lakhs only) as compensation.

4.The appellant filed the counter statement and denied all the averments made in the claim petition and contended that the accident did not occur due to the rash and negligent driving of the driver of the bus. The respondent himself invited the accident and he died and prayed for dismissal of the claim petition.

5.Before the Tribunal, the first respondent examined herself as P.W.1 and another witness one Chandran was examined as P.W.2 and produced documents as Ex.A1 to A.8. The appellant and other respondents did not examine any oral and documentary evidence.



6.The Tribunal, considering the pleadings, oral and documentary evidence and arguments of the counsel for the appellant and claimants and also appreciating the evidence of the fifth respondent held that the accident occurred only, due to the rash and negligent driving of the driver of the appellant Corporation and directed the appellant and the fifth respondent to pay a sum of Rs.6,50,500/- (Rupees Six Lakhs Fifty Thousand Five Hundred only) as compensation.

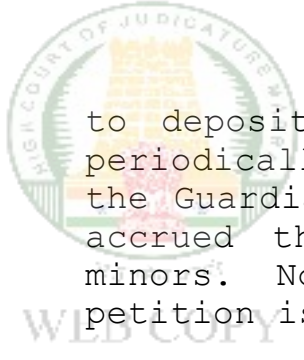
7.Agrieved against the said award, dated 16.03.2012, the appellant-Transport Corporation has filed the present appeal.

8.I have heard the learned Counsel appearing for the appellant and the learned counsel appearing for the 7<sup>th</sup> respondent and also perused all the materials available on record.

9.The contention of the learned counsel for the appellant that the Tribunal erred in fixing the entire liability on the fifth respondent, is untenable. The appellant and the fifth respondent did not let in any oral and documentary evidence to prove that the accident occurred only due to the rash and negligent driving of the deceased. On the other hand, FIR was registered only against the 5<sup>th</sup> respondent.

10.Similarly, the next contention of the learned counsel for the appellant that the Tribunal ought to have deducted 50% from notional income of the deceased as he was a bachelor at the time of the accident is unacceptable. The Tribunal took the age of the mother of the deceased and applied the correct multiplier to arrive at a compensation as loss of income. Therefore 1/3<sup>rd</sup> deduction made by the Tribunal is valid. The compensation awarded in respect of various heads is not excessive. It is only based on the documents produced by respondents 1 to 4/claimants. The appellant has not made out any case for modifying the judgment by reducing the compensation awarded by the Tribunal.

11.In the result, this Civil Miscellaneous Appeal is dismissed and the award passed 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.18 of 2010, on the file of the Motor Accident Claims Tribunal-Sub Court, Kuzhithurai, 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 respondents 1 & 2, <https://hcc.mca.gov.in/services> their Account Details, within a period of two weeks thereafter. Insofar as the respective shares of the minors/respondents 3 & 4 are concerned, the Tribunal is directed



to deposit the same in a Fixed Deposit under renewable scheme periodically, till they attain majority and the first respondent, the Guardian of the minors, is permitted to withdraw the interest accrued thereon once in three months for the welfare of the minors. No costs. Consequently, connected civil miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

1.The Motor Accident Claims Tribunal Sub Court, Kuzhithurai.

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

+1 cc to MR.J.S.MURALI, ADVOCATE, SR No. 16928

+1 cc to MR.P.PRABHAKARAN, ADVOCATE, SR No. 17267

**AM**

**CSL/CM-MSA/17.04.2017 : 4P/5C**

**C.M.A (MD) .No.225 of 2017**

**22.03.2017**