



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.03.2017

CORAM:

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

C.M.A. (MD) No.234 of 2017

in

C.M.P. (MD) No.2675 of 2017

The Managing Director,
Tamil Nadu State Transport Corporation,
Madurai Division,
Tirunelveli.

... Appellant/1st Respondent

Vs.

1.Kanagalakshmi
2.Karuppiah
3.Pappa

... Respondents 1 to 3/Petitioners

4.Pandi
5.Branch Manager,
TATA AIG General Insurance Company Limited
Mumbai.

... Respondents 4 & 5/Respondents 2 & 3

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree made in M.C.O.P.No.254 of 2010, dated 27.08.2014 on the file of the Motor Accident Claims Tribunal - cum - Chief Judicial Magistrate Court, Virudhunagar District at Srivilliputhur.

For Appellant	: Mr.P.Prabhakaran
For Respondents 1 to 3	: Mr.G.Marimuthu
For Respondent 5	: Ms.K.R.Shivasankari

JUDGMENT

Being aggrieved over the award passed by the Motor Accident Claims Tribunal-cum-Chief Judicial Magistrate Court, Virudhunagar District at Srivilliputhur in M.C.O.P.No.254 of 2010, the Transport Corporation has filed the present appeal.

2.The appellant Transport Corporation is the first respondent, the respondents 1 to 3, are the petitioners/claimants the fourth respondent is owner of the Auto and the fifth respondent is the insurer of the Auto in MCOP.No.254 of 2010. The respondents 1 to 3/claimants filed the claim petition in MCOP.No.254 of 2010 claiming a sum of Rs.8,00,000/- (Rupees Eight Lakhs only) as



compensation for the death of one Selvendran, husband of the first respondent and son of the respondents 2 & 3.

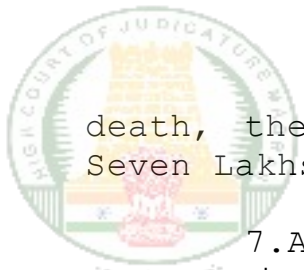
3.Facts of the case:-

According to the respondents 1 to 3, the said Selvanthran was travelling in an auto bearing Registration No.TN-67-K-2455 on 02.05.2008 at 5.30 p.m. At that time, the bus bearing Registration No.TN-72-N-0916 belonging to the appellant was driven by the driver of the bus in a rash and negligent manner and came in a opposite direction and dashed against the auto. Due to the said accident, the auto driver and other two persons died on the spot. The said Selvandran died in the hospital in spite of the medical treatment given to him. According to the respondents 1 to 3, the age of the deceased was 25 years at the time of the accident and he was working as Mason and was getting Rs.225/- per day and earning Rs.6,000/- (Rupees Six Thousand only) per month. The respondents 1 to 3 are the dependants of the deceased. Therefore, they filed the claim petition against the appellant and owner of the auto and Insurance Company, claiming a sum of Rs.8,00,000/- (Rupees Eight Lakhs only) as compensation for the death of the deceased.

4.The appellant filed counter statement and denied all averments made by the respondents 1 to 3 and submitted that the auto driver had drunken at the time of accident. He was carrying 9 passengers, in the auto, in excess of permitted capacity and in view of the same, he could not control the speed and dashed against the bus and invited the accident. The driver of the bus was not responsible for the accident. The appellant sent the representation to the Superintendent of Police and the hospital report stated that driver of the auto was in a drunken mood at the time of the accident.

5.Before the Tribunal, the first respondent was examined as as P.W.1 and marked 5 documents as Exs.P.1 to P.5. The driver of the appellant was examined as R.W.1 and one Karthikeyan, Legal Adviser of fifth respondent was examined as R.W.2 and marked 5 documents as Exs.R1 to R.5.

6.The Tribunal, considering the pleadings, oral and documentary evidence of P.W.1 and Ex.P.1-FIR and Ex.P.2 charge-sheet came to the conclusion that the accident occurred only due to the rash and negligent driving of the driver of bus, who was examined as R.W.1. In the absence of any evidence with regard to the income of the deceased by applying the multiplier and taking into consideration the age of the deceased, the Tribunal fixed the notional income of the deceased at Rs.4,500/- (Rupees Fourth Thousand Five Hundred only) and awarded a sum of Rs.6,48,000/- (Rupees Six Lakhs Fourtyeight Thousand Only) as loss of income. Considering the age and the nature of work done by the deceased before his



death, the Tribunal awarded a total sum of Rs.7,23,000/- (Rupees Seven Lakhs and Twenty Three Thousand only) as compensation.

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

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8. The appellant has filed the present appeal challenging only the quantum of compensation to the extent of Rs.2,23,000/- (Rupees Two Lakhs Twenty Three Thousand only) as seen from the Memo of valuation.

9. Therefore, the only issue to be decided in the appeal is whether the Tribunal has awarded excess compensation or awarded just compensation.

10. I have heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondents 1 to 3 & 5 and perused the materials available on record.

11. From the materials available on record, it is seen that the respondents 1 to 3 claimed that the deceased was earning Rs.6,000/- (Rupees Six Thousand only) per month, but they have not produced any document to substantiate the same. The Tribunal fixed the notional income at Rs.4,500/- (Rupees Four Thousand Five Hundred Only). In view of three claimants, the Tribunal deducted $1/3^{\text{rd}}$ for personal expenses and has applied the correct multiplier "18" as per the judgment reported in 2009(2)TN MAC 1 (SC) Sarla Verma v. Delhi Transport Corporation and awarded a sum of Rs.6,48,000/- (Rupees Six Lakhs Fourtyeight Thousand only) towards loss of income. The Tribunal awarded a sum of Rs.50,000/- towards loss of love and affection and a sum of Rs.25,000/- towards funeral expenses and the said amounts awarded to respondents 1 to 3 in different heads are not excessive.

12. The compensation awarded by the Tribunal is just compensation. The appellant has not made out any case for modifying the judgment by reducing the compensation awarded by the Tribunal.

13. 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.254 of 2010, on the file of the Motor Accidents Claims Tribunal-Chief Judicial Magistrate Court, Virudhunagar District at Srivilliputhur, 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/respondents 1 to 3, after getting their Account Details, within a period of two weeks thereafter. No costs. Consequently, connected miscellaneous petition is also dismissed.

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/True Copy/

Sd/-

Assistant Registrar(CO)

Sub Assistant Registrar

To

1. The Motor Accident Claims Tribunal - cum -
Chief Judicial Magistrate Court,
Viruthunagar District at Srivilliputhur.
2. The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to M/S.S.Srinivasa Raghavan, Advocate SR.No.17147
+1cc to M/S.P.Prabakaran, Advocate SR.No. 17263
+1cc to M/S.G.Marimuthu, Advocate SR.No.17143

C.M.A. (MD) No.234 of 2017
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MAS/RR/19.04.2017/4P/6C