



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.12.2017

CORAM :

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CMA(MD)No.1270 of 2016

and

CMP(MD)No.10849 of 2016 and

Cros.Obj(MD)No.34 of 2017

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

... Appellant in
CMA(MD)No.1270 of 2016 &
1st respondent in
Cros.Obj.(MD)No.34 of 2017

Vs.

1.Rajapushpam
2.Arul Murugan
3.Mayakrishnan
4.Minor Hemanth
5.Minor Rubasunmitha
6.Minor Rubarashmitha
(Minor respondents 4,5 & 6 are
rep.by their guardian, the 3rd
respondent)

7.Subha
8.Minor Pamitha
9.Minor Kavi Balan
(minor respondents 8&9 are
rep.by their mother,
7th respondent)

... 1 to 9th respondents
in CMA(MD)No.1270 of 2016
Cross Objectors in
Cros.Obj(MD)No.34 of 2017

10.Vincent Prabhakar
(R10 is given up in CMA)

...10th Respondent
in CMA(MD)No.1270 of 2016
& Second respondent in
Cros.Obj(MD)No.34 of 2017

Prayer: CMA(MD)No.1270 of 2016 is filed under Section 173 of Motor Vehicles Act, 1988 and Cross Objection (MD) No.34 of 2017 is filed under Order XLI, Rule 22 r/w Section 96(1) & 2 of CPC, against the judgment and decree dated 04.12.2015 made in MCOP.No.146 of 2014 on the file of the Motor Accident Claims Tribunal / Principal Sub Court, Tenkasi.



Appellant/

For Transport Corporation

: Mr.P.Prabhakaran

Respondents/

For Cross Objectors/claimants

: Mr.S.S.Thesigan

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JUDGMENT

The Transport Corporation has filed CMA(MD)No.1270 of 2016 questioning the impugned award on the ground of quantum. The claimants have filed Cross Objection(MD)No.34 of 2017.

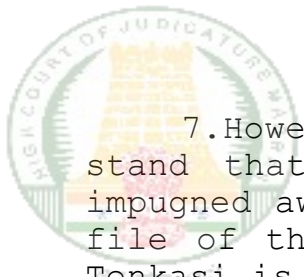
2.The deceased Thangaraj was aged 75 years at the time of accident. He was a retired Government employee. He was running a Dairy farm. He met with an accident involving the bus belonging to the appellant corporation on 06.07.2013. Crime No.233 of 2013 was registered on the file of the Pavor Chathiram police station. The claimants have filed MCOP.No.146 of 2014 on the file of the Motor Accident Claims Tribunal / Principal Sub Court, Tenkasi. The wife of the deceased and his three children filed the said claim petition. The Tribunal awarded a sum of Rs.10,05,400/- with interest.

3.As per the claim petition, the daughter was already given on marriage. The sons also cannot be said to be dependents of the deceased. Therefore, I am of the view that 50% deduction will have to be made in this case. The deceased was a pensioner. He was getting a sum of Rs.10,385/-. Since the wife alone can be said to be the dependent, 50% deduction will have to be made from the monthly income of the deceased.

4.The learned counsel appearing for the appellant contended that after the demise of the husband, the wife is getting the pension and that therefore the pension amount drawn by the deceased cannot be taken for the purpose of arriving at his monthly income.

5.The learned counsel for the respondent by placing reliance on the decision of this Court reported in 2008 2 TNMAC 314 (The Branch Manager, National Insurance Company Limited Vs. V.Shanmugathai & ors), contended that the compensatory amount earned by the deceased at the time of death will have to be taken into account as a whole.

6.The contention raised by the learned counsel for the claimants is correct. Since the deceased was 75 years, the multiplier 5 will have to be adopted. Applying the statutory formula, the compensation payable to the claimants would come to Rs.4,96,000/-. In the present case, the claimants have shown that the deceased was running a dairy farm and they have marked Ex.P.9 to show that he was earning a sum of Rs.20,000/- per month. The claimants have not adduced any evidence to show that following the demise of the said Thangaraj, the dairy farm has been wound up and no longer able to generate business income.



7. However, the transport corporation themselves have taken the stand that admitted liability is Rs.7,00,000/-. Therefore, the impugned award dated 04.12.2015 made in MCOP.No.146 of 2014 on the file of the Motor Accident Claims Tribunal / Principal Sub Court, Tenkasi is modified.

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8. The transport corporation is directed to deposit the sum of Rs.7,00,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of realization and costs, within a period of eight 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 their share as apportioned by the Tribunal, by filing proper application, less the amount already withdrawn by them, if any. The share of the minor claimants shall be deposited in any one of the nationalized bank and the natural guardians are permitted to withdraw the interest once in three months directly from the bank, till the minors attain majority.

9. CMA(MD)No.1270 of 2016 is partly allowed. Cross Objection (MD)No.34 of 2017 is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(T&P)

/True copy/

Sub Assistant Registrar

To

1. The Principal Sub Judge, (The Principal Sub.Court)
Motor Accident Claims Tribunal, Tenkasi.

2. The Record Keeper, V.R.Section, **(2 Copies)**
Madurai Bench of Madras High Court, Madurai.

+1CC TO M/S.P.PRABHAKARAN, ADVOCATE, SR NO.93102

CMA(MD)No.1270 of 2016
and

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15.12.2017

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MS/SV-MMS/SAR-4/20.04.2018/3P.5C