

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED : 06.03.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI**C.M.A. (MD) No.1449 of 2016****and****C.M.P (MD) No.12034 of 2016**

The Managing Director,
Tamil Nadu State Transport Corporation,
Karaikudi. ... Appellant/Respondent

Vs.

1.Rajeswari
2.Minor Harees
3.Minor Nisha
4.Ramavalli ... Respondents 1 to 4/Petitioners
[Minors 2 and 3 are represented
through their mother and natural
guardian Rajeswari, the I Respondent herein]

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 19.10.2012, made in M.C.O.P.No.81 of 2012, by the Motor Accident Claims Tribunal - cum - Additional District Court, Ramanathapuram.

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

JUDGMENT

The appellant is the respondent in M.C.O.P.No.81 of 2012 on the file of the Motor Accident Claims Tribunal - cum - Additional District Court, Ramanathapuram.

2. The respondent/claimant filed the claim petition claiming compensation for the death of one Thiruselvam, the husband of the first respondent and father of the respondents 2 and 3 and son of the fourth respondent, who travelled in the bus bearing Registration No.TN-63-N-0939, from Ramanathapuram to Kilakarai, in the accident occurred on 17.05.2010.

3. On contest, the Tribunal found that the driver of the appellant-Transport Corporation was rash and negligent and awarded a sum of Rs.7,93,000/- (Rupees Seven Lakhs and Ninety Three thousand only) as compensation.



4. Against the said award, the appellant-Transport Corporation has filed the present appeal.

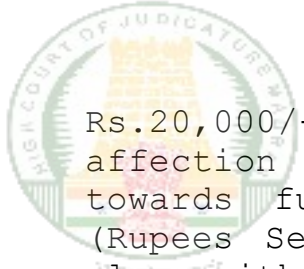
5. Brief facts of the case of the respondents/claimants are as follows:

5.1. On 17.05.2010, the deceased Thiruselvam, was travelling in the bus bearing Registration No.TN-63-N-0939 belonging to the appellant-Transport Corporation. Due to the rash and negligent driving of the driver of the bus and by applying the sudden brake, the deceased fell down from the bus and sustained injuries all over the body and succumbed the same. The deceased was 32 years at the time of the accident and was earning a sum of Rs.9,000/- (Rupees Nine Thousand only) by running a photo studio and therefore, the respondents/claimants, who are the dependents of the deceased, filed the claim petition claiming the compensation of Rs.14,00,000/- (Rupees Fourteen Lakhs only).

5.2. The appellant-Transport Corporation filed the counter statement inter alia contending that the driver of the appellant-Transport Corporation bus was driving the bus slowly by following all the rules and regulations at the time of the accident. The deceased was under the influence of alcohol and he suddenly jumped from the front door of the bus and sustained injuries and died due to the said injuries. The accident occurred only due to the negligence on the part of the deceased. The respondents/claimants have to prove the age, income of the deceased and that they are the only legal heirs of the deceased and if any compensation is to be awarded, the rate of interest must be as per the prevailing rate fixed by the Honourable Supreme Court and the Reserve Bank of India.

5.3. Before the Tribunal, the first respondent/first claimant examined herself as P.W.1 and one Baskaran was examined as P.W.2. On the side of the respondents/claimants, Exs.P.1 to P.7 were marked. One Rajendran was examined as R.W.1 and no documentary evidence was let in on the side of the appellant-Transport Corporation.

5.4. The Tribunal based on the pleadings and oral and documentary evidence, came to the conclusion that the accident took place only due to the rash and negligent driving of the driver of the appellant-Transport Corporation bus and held that the appellant-Transport Corporation is liable to pay the compensation. The Tribunal considering the age and income of the deceased, fixed the monthly income of the deceased as Rs.6,000/- (Rupees Six Thousand only) and after deducting 1/3rd amount towards personal expenses of the deceased, fixed the monthly income at Rs.4,000/- (Rupees Four Thousand only) and by applying <https://hdc.mca.gov.in/services/> '16', determined the loss of income at Rs.7,68,000/- (Rupees Seven Lakhs and Sixty Eight Thousand only) [Rs.4,000/- X 12 X 16]. The Tribunal also awarded a sum of



Rs.20,000/- (Rupees Twenty Thousand only) towards loss of love and affection and a sum of Rs.5,000/- (Rupees Five Thousand only) towards funeral expenses and totally, a sum of Rs.7,93,000/- (Rupees Seven Lakhs and Ninety Three Thousand only) was awarded along with interest at the rate of 7.5% per annum from the date of petition till date of realisation and proportionate costs.

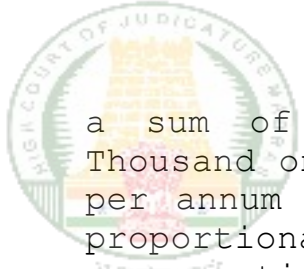
5.5. Aggrieved over the same, the appellant-Transport Corporation has filed the present appeal.

6. The learned Counsel for the appellant submitted that P.W.2 who claimed to be the co-passenger, failed to prove the same by producing the bus ticket that he was a coolie travelling in the bus at the time of the accident and that the Tribunal failed to see that the deceased was under the influence of alcohol and suddenly jumped from the bus and due to his negligence only, the deceased died. Further, he submitted that the Tribunal erroneously fixed the monthly income of the deceased at Rs.6,000/- (Rupees Six Thousand only) without any documents being produced by the respondents/claimants to substantiate their claim and therefore, prayed for setting aside the award of the Tribunal.

7. Heard the learned Counsel for the appellant-Transport Corporation and perused the materials available on record.

8. From the records, it is seen that the Tribunal, considering the pleadings and oral and documentary evidence, came to the conclusion that the accident took place only due to the rash and negligent driving of the driver of the appellant-Transport Corporation bus. Further, the Tribunal rejected the evidence of the driver of the appellant-Transport Corporation bus by assigning valid reasons and found that the appellant-Transport Corporation has not substantiated that the deceased was under the influence of alcohol at the time of the accident, but the same occurred only due to the negligence of the deceased. Though the respondents/claimants tried to substantiate their claim with regard to the income of the deceased by producing the documents relating to the year 2002, viz., 8 years prior to the accident, the Tribunal rightly rejected the same and fixed the monthly income of the deceased at Rs.6,000/- (Rupees Six Thousand only) and the determination of the monthly income is in consonance with the ratio laid down by the Honourable Supreme Court and this Court in various judgments.

9. The Tribunal, after deducting 1/3rd amount towards personal expenses of the deceased, fixed the monthly income at Rs.4,000/- (Rupees Four Thousand only) and by applying the multiplier '16', determined the loss of income at Rs.7,68,000/- (Rupees Seven Lakhs and Sixty Eight Thousand only) [Rs.4,000/- X 12 X 16]. The Tribunal also awarded a sum of Rs.20,000/- (Rupees Twenty Thousand only) towards loss of love and affection and a sum of Rs.5,000/- (Rupees Five Thousand only) towards funeral expenses and totally,



a sum of Rs.7,93,000/- (Rupees Seven Lakhs and Ninety Three Thousand only) was awarded along with interest at the rate of 7.5% per annum from the date of petition till date of realisation and proportionate costs. The award of the Tribunal is just compensation in the facts and circumstances of the case.

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10. In the result, this Civil Miscellaneous Appeal fails and the same is dismissed. The appellant-Transport Corporation is directed to deposit the entire award amount along with accrued interest and costs, less the amount already deposited, if any, to the credit of M.C.O.P.No.81 of 2012, on file of the Motor Accident Claims Tribunal - cum - Additional District Court, Ramanathapuram, within a period of eight weeks from the date of receipt of a copy of this judgment. No costs. Consequently, the connected civil miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

To

1.The Additional District Judge,
The Motor Accident Claims Tribunal,
Ramanathapuram.

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

+1cc to Mr.D.Sivaraman, Advocate Sr.No. 12719

rsb

AE/PM PN/17.03.2017/4P/4C

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and

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