



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 22.08.2017

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

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C.M.A.Nos.553 of 2014 & 41 of 2015
and
M.P(MD).No.1 of 2014

C.M.A.No.553 of 2014

The Managing Director,
Tamil Nadu State Transport Corporation,
New Junction Road,
Kumbakonam.

... Appellant/Respondent

Vs.

1.Amutha
2.Ganesan
3.Minor Vijayakummar
4.Minor Kasthuri

(The respondents 3 and 4 are minors represented by Guardian and mother Amutha R1)

... Respondents/Petitioners

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the order and Decree made in M.C.O.PNo.719/2012 dated 03.12.2013 on the file of the Motor Accident Claims Tribunal/Special District Court, Thanjavur.

For Appellant : Mr.P.Prabhakaran
For R-1 to R-4 : Mr.G.Karnan

C.M.A.No.41 of 2015

1.Amutha
2.Ganesan
3.Minor Vijayakummar
4.Minor Kasthuri

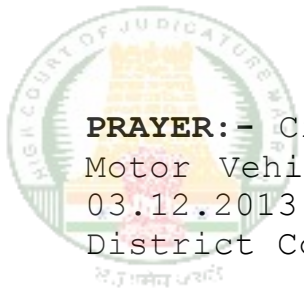
(Minors 3 and 4 are represented by their natural guardian/1st Appellant)

... Appellants/Claimants

Vs.

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

... Respondent/Respondent



PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgement and Decree dated 03.12.2013 in M.C.O.P.No.719 of 2012 on the file of Special District Court / Motor Accidents Claims Tribunal, Thanjavur.

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For Appellants : Mr.G.Karnan
For Respondent : Mr.P.Prabhakaran

COMMON JUDGMENT

Since both the Civil Miscellaneous Appeals are arising out of the same accident, both the appeals are disposed of by this Common judgment.

2. Both the Civil Miscellaneous Appeal are directed under Section 173 of Motor Vehicles Act, 1988, against the award dated 03.12.2013 made in M.C.O.P.No.719 of 2012 on the file of the Motor Accident claims Tribunal/Special District Court, Thanjavur.

3. It is a case of fatal accident, which took place on 27.04.2012 at about 7.15 p.m., near Vaandaiyaar Engineering College.

4. It is the case of the claimants before the Tribunal that on the date of accident, the deceased by name Jeevanandham travelled in a bicycle along with one Paramasiviam as a pillion rider at Thanjavur - Nagapattinam and when they reached Vaandaiyaar Engineering College, the Transport Corporation bus bearing Registration No.TN 49 N 1305, which was coming on the same direction in a rash and negligent manner, dashed against the bicycle and in the said accident the said Jeevanandham died on the spot.

5. The claimants filed an application in M.C.O.P.No.719 of 2012 on the file of the Motor Accident claims Tribunal, Special District Court, Thanjavur.

6. Before the Tribunal, the claimants examined two witnesses as P.W.1 and P.W.2 and marked four documents as Exs.P1 to P4. On the side of the Transport Corporation, one witness was examined as R.W.1 and no document was marked on their side.

7.The Tribunal after considering the pleadings, oral and documentary evidences and the arguments advanced on either side and also appreciating the evidences on record held that the accident occurred only due to the rash and negligent driving of the Transport Corporation bus and therefore, directed the Transport Corporation to pay compensation of Rs.6,69,000/- as total compensation.



8. Against which, the appellant/Transport Corporation has filed C.M.A(MD)No.553 of 2014 challenging the liability as well as quantum and the claimants have filed C.M.A(MD)No.41 of 2015 seeking enhancement of compensation.

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9. Though the appellant/Corporation has filed C.M.A(MD)No.553 of 2014, challenging the liability as well as quantum, at the time of making arguments, the learned counsel for the appellant restricted his arguments only to the aspect of quantum and submitted that the Tribunal erred in fixing the monthly income of the deceased at Rs.6,000/- when there is no proof for the same. He further submitted that the deceased was a bachelor at the time of accident and therefore, the Tribunal ought to have made 50% deduction instead of 1/3rd deduction and the compensation awarded under the other heads are also on higher side and therefore, the compensation awarded by the Tribunal is liable to be interfered with by this Court.

10. Per contra, the learned counsel for the appellants in C.M.A(MD)No.41 of 2015 submitted that the Tribunal has not applied proper multiplier and no future prospects have been added and therefore, the compensation awarded for loss of income has to be enhanced.

11. Heard the submissions made on either side and perused the materials available on record.

12. With regard to quantum of compensation, at the time of accident, the deceased was stated to be a Driver and was earning a sum of Rs.10,000/- per month. To show that the deceased was earning about Rs.10,000/- per month, no document was filed. Therefore, the Tribunal took only Rs.6,000/- as monthly income, which is very low, in my considered view. Therefore, applying the ratio laid down in **Syed Sadiq etc., vs. Divisional Manager, United India Insurance Company Ltd.**, reported in **2014(1) TN MAC 459(SC)**, this Court fixes a sum of Rs.6000/- as notional monthly income of the deceased. Further, no future prospects has been awarded as per the ratio laid down in **Rajesh and others .vs. Rajbir Singh and others reported in 2013(3) CTC 883**. Since the age of the deceased was found to be 28 years, the appropriate multiplier to be applied as per the **Smt.Sarla Verma .vs. Delhi Transport Corporation reported in 2009(2) TN MAC 1(SC)** case, is '17'. Therefore, 50% has to be added towards future prospects as the age of the deceased was found to be as 28. If 50% is added towards future prospects, the monthly income would be Rs.6,000/- + 50 % = Rs.9000/-

13. Since the deceased was a bachelor, as per the judgement **Smt.Sarla Verma .vs. Delhi Transport Corporation reported in 2009**

(2) **TN MAC 1(SC), 50%** has to be deducted towards personal expenses. The loss of income after deduction would be Rs.6000 + 50% - 50% = Rs.4500/- and therefore, the loss of income would be Rs.6000/- + 50% - 50% X 12 X 17 = Rs.9,18,000/-, and therefore, the compensation awarded for loss of income is enhanced to Rs.9,18,000/- and the other heads are confirmed.

14. In view of the settled position of law, this Court modifies the award of the Tribunal by enhancing the compensation, as under:-

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	For loss of income	6,24,000	9,18,000	enhanced
2.	For loss of love and affection	40,000	40,000	confirmed
3.	For Funeral Expenses	5,000	5,000	confirmed
	Total	Rs.6,69,000	Rs.9,63,000	By enhancing a sum of Rs.2,94,000/-

14. In the result,

(i) C.M.A(MD)No.553 of 2014 is dismissed and C.M.A(MD)No.41 of 2015 is partly allowed enhancing the award of the Tribunal from **Rs.6,69,000/- (Rupees Six Lakhs and Sixty Nine Thousand Only) to a sum of Rs.9,63,000/-** (Rupees Nine Lakhs and Sixty Three Thousand only) along with interest at the rate of 7.5% per annum from the date of petition till date of realisation and proportionate costs; the appellants in C.M.A(MD)No.41 of 2015 are directed to pay the additional Court fees, if any, within a period of two weeks from the date of receipt of a copy of this judgment;

(ii) The Transport Corporation is directed to deposit the entire award amount with accrued interests and costs, within a period of eight weeks from the date of receipt of a copy of this order, if not already deposited and on such deposit being made, the major claimants are permitted to withdraw their respective shares as apportioned by the Tribunal, with proportionate interests and costs. The Tribunal is directed to deposit the share of the minor claimants in any one of the Nationalised Banks, in a Fixed Deposit scheme, till the minors attain majority. The minor claimants, is permitted to withdraw the accrued interest once in three months directly from the bank, only for the welfare of the minors. No Costs. Consequently,



connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (Crl side)

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Sub Assistant Registrar

To

The Special District Judge,
Motor Accident Claims Tribunal,
Thanjavur.

Copy to:

The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.G.KARNAN, Advocate, SR. 74057

+1cc to Mr.G.KARNAN, Advocate, SR No. 74056

+1cc to Mr.P.PRABHAKARAN, Advocate, SR.No.73778

C.M.A.No.553 of 2014 & 41 of 2015
22.08.2017

PM

KK/GT/SAR 3/20.09.2017/ 5P- 4C

KK/SAR-/20.03.2019/5P-3C