

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

DATED : 11.08.2017

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THE HONOURABLE MRS.JUSTICE J. NISHA BANU**C.M.A. (MD) No.407 of 2016
and CMP. (MD) No.5556 of 2016**

The Managing Director,
Tamil Nadu State Transport Corporation,
New Railway Station Road,
Kumbakonam Division.

.. Appellant /1st Respondent

Vs.

1.Loganayaki

.. 1st Respondent / Petitioner

2.Sakthimala @ Malathy

.. 2nd Respondent /2nd Respondent

Prayer:-Appeal filed under Section 173 of the Motor Vehicles Act,1988, to allow this appeal, set aside the Award and Decree made in M.C.O.P.No.450/2013, dated 29.10.2015, on the file of the Motor Accident Claims Tribunal/ Special District Court, Thanjavur.

For Appellant	: Mr.P.Prabhakaran
For R1	: Mr.Jameel Arasu
For R2	: Mr.A.Joel Paul Antony

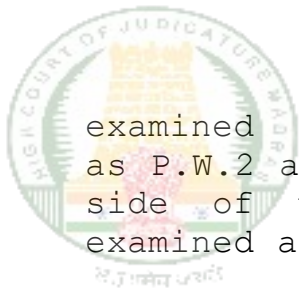
JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant/State Transport Corporation against the judgment and award of the Motor Accident Claims Tribunal/Special District Court, Thanjavur, passed in M.C.O.P.No.450 of 2013, dated 29.10.2015.

2. It is a case of fatal accident, which took place on 23.07.2012 at about 20.30 hours at Trichy Thanjavur Main Road. When the deceased was riding bicycle from east to west, the bus belonging to the Transport Corporation bearing Registration No. TN-68-N-0423 came from the opposite side and dashed against the deceased and he died on the spot.

3. The claimant, who is the wife of the deceased, filed an application in M.C.O.P.No.450 of 2013, dated 29.10.2015 on the file of the Motor Accident Claims Tribunal/Special District Court, Thanjavur, seeking compensation.

4.Before the Tribunal, the first respondent/claimant



examined herself as P.W.1 and one another witness was examined as P.W.2 and marked seventeen documents as Exs.P-1 to P-17. On the side of the appellant/Transport Corporation, one witness was examined as R.W.1 and no document was marked.

5.The Tribunal, after considering the pleadings, oral and documentary evidences and the arguments of the counsel for the appellant and claimant and also on appreciating the evidences on record, held that the accident occurred only, due to the rash and negligent driving of the driver of the appellant/Transport Corporation and directed the appellant to pay a sum of Rs.12,75,000/-, as compensation.

6.Against which, the appellant/Transport Corporation has filed this present appeal challenging the liability as well as quantum of compensation awarded by the Tribunal.

7.The learned counsel for the appellant/Transport Corporation argued that 2 different vehicle numbers had been given and the Tribunal, without finding the same, has passed the award. He would draw the attention of this Court to paragraph No.9 at page No.20 of the order of the Tribunal, wherein lorry No.TN-60-8889 is mentioned, whereas in paragraph No.7, it is stated that the vehicle involved is a bus bearing Registration No.TN-68-N-0423.

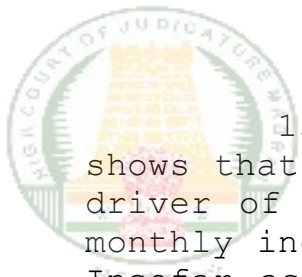
8. This Court has perused the said portion of the order. It is clear that there is typographical error in the order of the Tribunal.

9. The learned counsel for the appellant would further submitted that deceased was also a cause for the accident and therefore, negligence should have been fixed on the deceased also. Further, the compensation and interest awarded by the Tribunal is also on higher side.

10. The learned counsel appearing for the second respondent/ claimant would draw the attention of this Court to the finding rendered by the Tribunal in paragraph No.9, wherein it has been rendered that a perusal of the evidence of P.W.1 and 2 and Ex.A.1 would show that the accident occurred due to rash and negligent driving of the appellant Transport Corporation and there is no evidence on the side of the appellant Transport Corporation to prove that the accident occurred not due to rash and negligent driving of the bus.

11. Based on the above finding, the learned counsel for the second respondent submitted that Tribunal has correctly come to the conclusion that the driver of the bus was the cause for the accident.

12. Heard the learned counsel appearing on both sides and perused the materials available on record.



13. A perusal of the award passed by the Tribunal clearly shows that the Tribunal has discussed in detail and found that the driver of the lorry was the cause for the accident. Fixation of monthly income at Rs.6000/- is in accordance with the settled law. Insofar as the addition of future prospects for fixing the income of the deceased, the Tribunal has rightly relied on the Judgment reported in 2013(1) TN MAC page 55 (SC) in Rajesh and Others Vs. Rajbir Singh and Others. The Tribunal had come to a correct conclusion and awarded just and reasonable compensation and therefore, there is no infirmity in the award passed by the Tribunal and the same does not require interference at the hands of this Court. However, taking into consideration the submissions made by the learned counsel for the appellant, I am inclined to reduce the rate of interest from 9% to 7.5% per annum.

14. In the result, this Civil Miscellaneous Appeal is partly allowed and the award passed in M.C.O.P.No.450 of 2013, dated 29.10.2015 on the file of the Motor Accident Claims Tribunal/Special District Court, Thanjavur, is confirmed except modification of the interest rate. The rate of interest is reduced from 9% to 7.5% per annum, from the date of petition till realization. The appellant/Transport Corporation is directed to deposit the entire award amount with accrued interests and costs, within a period of four weeks from the date of receipt of a copy of this order, if not already deposited and on such deposit being made, the claimant is permitted to withdraw the same, with proportionate interests and costs, without filing any formal application before the Tribunal. No Costs. Consequently, C.M.P. (MD) No. 5556 of 2016 is closed.

Sd/-

Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar

To

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

+1cc to M/S. B.JAMEEL ARASU, Advocate, SR.No.70781.

+1cc to M/S. P.PRABHAKARAN, Advocate, SR.No.70122.

CM

AE/MR KKR/SAR3/01.09.2017/3P/4C