



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

C.M.A. (MD)No.441 of 2015 and M.P(MD)No.1 of 2015

AND

CROSS OBJECTION (MD)No.7 of 2017

& C.M.P (MD)No.1057 of 2017

C.M.A. (MD)No.441 of 2015 :

The Managing Director,
Tamil Nadu State Transport Corporation,
Karaikudi,
Sivagangai District.

...Appellant/Respondent

Vs.

1.Nagarajan
2.Meenakshi
3.Sathish Kumar
4.Minor Muthupandi
**(Respondent No.4 is minor
represented by his father and
guardian the first respondent)**

...Respondents/Petitioners

Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgment and decree order dated 03.09.2014 passed in M.C.O.P.No.1405 of 2012 on the file of the Motor Accident Claims Tribunal/ VI Additional District Court, Madurai.

For Appellant :Mr.P.Prabhakaran

For Respondents : Mr.P.Pethu Rajesh

CROSS OBJECTION (MD)No.7 of 2017:-

1.Nagarajan
2.Meenakshi
3.Sathish Kumar
4.Minor Muthupandi
**(The fourth respondent is a
minor rep.by his father and
guardian the first respondent)**

...Cross Objectors/Respondents



-Vs-

The Managing Director,
Tamil Nadu State Transport Corporation,
Karaikudi,
Sivagangai District.

...Respondent/ Appellant

Cross Objection filed under Order 41, Rule 22 of Code of Civil Procedure, to enhance the compensation awarded in M.C.O.P.No.1405 of 2012 on the file of the Motor Accident Claims Tribunal/ VI Additional District Court, Madurai, dated 03.09.2014 and pass further order as this Court may deem fit and proper.

For Appellant : P.Pethu Rajesh

For Respondents : Mr.P.Prabhakaran

COMMON JUDGMENT

C.M.A(MD)No.441 of 2015 has been preferred by the Transport Corporation against the award of Rs.8,59,000/- (Rupees Eight Lakhs Fifty Nine Thousand only) for the death of one Karthik Kumar, aged about 21 years, a Travel Agent allegedly earning about Rs.6,000/- (Rupees Six Thousand only) per month in the accident occurred on 12.06.2011 when he was riding his two wheeler, which was hit by the Transport Corporation bus driven in a rash and negligent manner.

2. Heard Mr.P.Prabhakaran, learned Counsel appearing for the appellant and Mr.P.Pethu Rajesh, learned Counsel appearing for the respondents/claimants.

3. The learned Counsel appearing for the appellant would submit that the Tribunal has erroneously deducted 1/4th amount as per the size of the family, even though the deceased was a bachelor and therefore, 50% is required to be deducted.

4. On the other hand, Mr.P.Pethu Rajesh, learned Counsel appearing for the respondents/claimants would submit that a sum of Rs.4,500/- determined as monthly of the deceased is very low and therefore, he seeks enhancement.

5. A close scrutiny of the award and exhibits would reveal that the accident occurred because of the rash and negligent driving of the bus as rightly opined by the Tribunal based on Exs.P.1 - F.I.R, P.6 - Charge sheet and based on the evidence of

PW.1 who is also a eyewitness. Therefore, the finding of the Tribunal that the driver of the bus is responsible for the accident cannot be set aside.

6. The Tribunal, in the absence of any proof regarding the monthly income of the deceased, determined the monthly income at Rs.4,500/- (Rupees Four Thousand Five Hundred only). The Honourable Supreme Court determined the monthly income at Rs.6,500/- for a Vegetable vendor who sustained injuries in the accident occurred on 14.02.2008, in **Syed Sadiq, etc -Vs- Divisional Manager, United India Insurance Co. Ltd.**, reported in **2014 (1) TN MAC 459 (SC)**. Whereas, in the case on hand, the accident occurred on 12.06.2011. Therefore, this Court instead of following the above determination, this Court takes a sum of Rs.6,000/- (Rupees Six Thousand only) as claimed in the claim petition.

7. No amount towards future prospects was added along with income and as per the judgment of the Honourable Supreme Court in **Rajesh and others -Vs- Rajbir Singh and others** reported in **2013 (2) TNMAC 55**, 50% has to be added for future prospects and the monthly income of the deceased would be Rs.9,000/- [Rs.6,000/- + 50% = Rs.9,000/-]. The deceased was a bachelor and therefore 50% has to be deducted towards his personal expenses, whereas the Tribunal wrongly deducted 1/4th amount as per the size of the family. In view of that, the loss of income would be Rs.4,500/- (Rupees Four Thousand Five Hundred only). [Rs.9,000/- - Rs.4,500/-]. The Tribunal rightly applied the multiplier '18' as the age of the deceased is 21 as per the judgment of the **Sarla Verma v. Delhi Transport Corporation** reported in **(2009) 6 Supreme Court Cases 121**. Accordingly, the loss of income would be **Rs.9,72,000.00** (Rupees Nine Lakhs Seventy Two Thousand only) [Rs.4,500/- X 12 X 18].

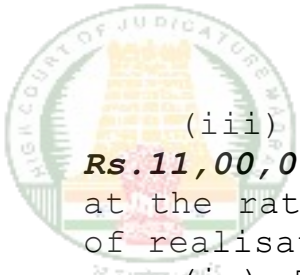
8. The other amounts awarded by the Tribunal, viz., a sum of **Rs.1,00,000/-** (Rupees One Lakh only) towards loss of love and affection to all the four family members; a sum of **Rs.25,000/-** (Rupees Twenty Five Thousand only) towards funeral expenses; a sum of **Rs.5,000/-** (Rupees Five Thousand only) towards transportation charges and a sum of **Rs.500/-** (Rupees Five Hundred only) towards loss of articles, are very reasonable and they are confirmed.

9. Accordingly, the respondents/claimants are entitled to a sum of Rs.11,02,500/- (Rupees Eleven Lakhs Two Thousand Five Hundred only), rounded off to **Rs.11,00,000/-** (Rupees Eleven Lakhs only) and the rate of interest at 7.5% per annum awarded by the Tribunal remains unaltered.

10. In the result,

(i) C.M.A(MD)No.441 of 2015 is dismissed. No costs. Consequently, the connected miscellaneous petition is also dismissed;

(ii) Cross Objection (MD)No.7 of 2017 is partly allowed. No costs. Consequently, the connected civil miscellaneous petition is closed;



(iii) The respondents/claimants are entitled to a sum of **Rs.11,00,000/-** (Rupees Eleven Lakhs only) along with the interest at the rate of 7.5% per annum from the date of petition till date of realisation and also proportionate costs;

(iv) The parents of the deceased are entitled to a sum of **Rs.4,00,000/-** (Rupees Four Lakhs only) each and the brothers are entitled to a sum of **Rs.1,50,000/-** (Rupees One Lakh Fifty Thousand only) each;

(v) The appellant is directed to deposit the entire award amount along with interest and costs to the credit of M.C.O.P.No.1405 of 2012 on the file of the Motor Accident Claims Tribunal/ VI Additional District Court, Madurai, less the amount already deposited, if any, within a period of twelve weeks from the date of receipt of a copy of this judgment;

(vi) On such deposit, the Tribunal shall transfer the respective shares of the respondents 1 to 3/claimants 1 to 3, to their personal Savings Bank Account Numbers through RTGS/NEFT system within a period of four weeks thereafter.

(vi) The share of the minor fourth respondent/fourth claimant is directed to be kept in an interest bearing Fixed Deposit in any one of the Nationalised Banks under the renewable scheme till he attains majority and the first respondent/first claimant - father of the minor fourth respondent is permitted to withdraw the accrued interest once in three months.

(vii) The respondents/claimants 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.

Sd/-

Assistant Registrar(Writs)

/True copy/

Sub Assistant Registrar

TO

1.The Motor Accident Claims Tribunal/VI Additional District Court, Madurai.

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

+1 cc to M/s.P.Praphakaran, Advocate in SR.No. 5762

+2 cc's to M/s.P.Pethu Rajesh, Advocate in SR.Nos.5726 & 5727

gsr

CSL/SV-MMS/24.02.2017 : 4P/6C

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