



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 21.07.2017

CORAM:

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A. (MD) .No.848 of 2016

1.S.Arunachalam
2.Vasanthi

.. Appellants /Petitioners

Vs.

1.Alexander (Given up)
(R1 given up vide order dated
30.01.2015 made in M.P(MD) .No. 1 of 2014
in CMA.SR.16766 of 2014)

2.Tamil Nadu State Transport Corporation (Madurai) Limited,
Rep. by its General Manager,
Ranithottam,
Nagercoil, Nagercoil Village,
Agasteeswaram Taluk,
Kanyakumari District.

3.Ramaiah

4.United India Insurance company Limited,
Rep. by its Branch Manager,
Asisisi Building 2nd Floor,
Nagercoil,
Nagercoil Village,
Agasteeswaram Taluk,
Kanyakumari District.

.. Respondents/Respondents

(3rd respondent is remained ex-parte before
the Lower Court)

Prayer:- Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to enhance the award amount passed in M.C.O.P.No.76 of 2007, dated 17.11.2008, on the file of the Motor accidents Claims Tribunal-cum-District Judge, Kanyakumari District at Nagercoil.

For Appellants	: Mr.K.Vamanan
For R-2	: Mr.P.Prabakaran for Mr.P.Manoharan
For R-4	: Mr.A.Shajahan



J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellants/claimants, seeking enhancement of compensation awarded in M.C.O.P.No.76 of 2007, dated 17.11.2008 by the Motor accidents Claims Tribunal-cum-District Judge, Kanyakumari District at Nagercoil.

2. It is a case of fatal accident, which took place on 15.05.2006 at about 7.00 p.m., at Vadasery to Trivendrum Road.

3. It is the case of the claimants before the Tribunal that one Thiru.Ramaiah, the husband of the first petitioner's/claimant's sister Rajam drove his TVS Suzuki bearing Registration No.TN 74 C 4458 with his wife Rajam, having the son of the first petitioner by name Sennesh Ram, aged about 1 ½ years as pillion rider from east to west on the Vadasery to Trivandrum Road to Sushurusha Hospital at Kaliyankadu. When he reached the eastern side of the Paravathipuram Bridge Junction, the Transport Corporation bus bearing Registration No.TN 74 N 0927 came in a rash and negligent manner without sounding horn and dashed against the two-wheeler and caused the accident. In the said accident, the deceased fell down from the two-wheeler and he succumbed to the injuries.

4. The claimants filed an application in M.C.O.P.No.76 of 2007 on the file of the Motor Accident Claims Tribunal-cum-District Judge, Kanyakumari District at Nagercoil, claiming compensation.

5. Before the Tribunal, on side of the appellants one witness was examined as P.W.1 and eight documents were marked as Ex.P1 to Ex.P8. On the side of the Transport Corporation, one witness was examined as R.W.1 and no document was marked on their side.

6. The Tribunal, after considering the pleadings, oral and documentary evidence and the arguments advanced on either side and also appreciating the evidence on record, held that the accident occurred only, due to the rash and negligent driving of the driver of the Transport Corporation and directed the Transport Corporation to pay a sum of Rs.1,50,000/-, as compensation to the second petitioner, the mother of the deceased alone.

7. Against which, the appellants have filed this present appeal seeking enhancement of compensation.

8. The learned counsel for the appellants submitted that since the deceased was a minor boy aged about 1 ½ years, the Tribunal ought to have fixed the notional income as Rs.15,000/- and multiplier '15' should be taken into account for arriving at the compensation in the light of the decision rendered by the Honourable Apex Court in **R.K.Malik and another vs. Kiran Pal and Others** reported in **2009 (1) TN MAC 593 (SC)**. But, without considering the same, the Tribunal adopted multiplier '10' and awarded Rs.1,50,000/-



for loss of income and no amount has been awarded for loss of love and affection, for funeral expenses and for transportation and therefore, the compensation should be enhanced. However, the appellants restrict their claim in this appeal to Rs.1,00,000/- and therefore, the same may be considered.

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9. The learned counsel appearing for the second respondent/Transport Corporation fairly submitted that no amount has been awarded by the Tribunal for loss of love and affection, for transportation and for funeral expenses and multiplier '15' should be applied as per the settled legal position. He further submitted that since the claimants have restricted their claim to Rs. 1,00,000/-, he has no objection for enhancement of the said sum. However, he submitted that the interest awarded by the Tribunal is on higher side and therefore, the same may be reduced to 7.5%.

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

11. As per the settled legal position, as contended by the learned counsel for the appellants, in the present case, considering the age of the deceased aged 1 ½ years, multiplier '15' is to be adopted. If multiplier '15' is adopted and compensation for loss of love and affection, for funeral expenses and for transportation, is awarded, the compensation would be more. Since, the appellants have restricted their claim in the event of the this appeal to Rs.1,00,000/-, this Court is inclined to enhance the compensation from Rs.1,50,000/- to Rs.2,50,000/-. Taking into consideration the submissions made by the learned counsel for the appellants, I am inclined to reduce the rate of interest from 9% to 7.5%.

12. In the result, this Civil Miscellaneous Appeal is allowed, enhancing the award of the Tribunal from **Rs.1,50,000/--** (Rupees One Lakh and Fifty Thousand only) to a sum of **Rs.2,50,000/-** (Rupees Two Lakhs and Fifty 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 second respondent/Transport Corporation is directed to deposit the entire award amount of Rs. 2,50,000/- (Rupees Two Lakhs and Fifty Thousand only) with accrued interests and costs, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the second appellant/claimant is permitted to withdraw the entire award amount, with accrued interests and costs, without filing any formal application before the Tribunal. No Costs.

Sd/-
Assistant Registrar (CO)

/True Copy/



To

1. The Motor accidents Claims Tribunal-cum-District Judge,
Kanyakumari District.

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

+ 1 CC TO Mr.K.VAMANAN, ADVOCATE IN SR No. 67235
+ 1 CC TO Mr.A.SHAJAHAN, ADVOCATE IN SR No. 67348
+ 1 CC TO Mr.R.PRABHAKARAN, ADVOCATE IN SR No. 66840

PM

TE/KP/SAR-IV : 10/08/2017 : 4P/6C

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