



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.02.2017

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

C.M.A(MD)No.1033 of 2013 and M.P(MD)No.2 of 2013

AND

Cross Objection (MD)No.2 of 2014

in

C.M.A(MD)No.1033 of 2013

C.M.A(MD)No.1033 of 2013:

The Managing Director,
Tamil Nadu State Express Transport Corporation,
Pallavan Salai,
Chennai - 600 002.

... Appellant/ Respondent

Vs.

1.Pandiammal
2.Sumathi
3.Priya
4.Vaishnavi

... Respondents 1 to 4/ Petitioners

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 27.04.2012, made in M.C.O.P.No.74 of 2011, by the Motor Accident Claims Tribunal - cum - Principal District Court, Theni.

For Appellant : Mr.P.Prabhakaran

For Respondents : Mr.M.Senthil Kumar

Cross Objection (MD)No.2 of 2014:

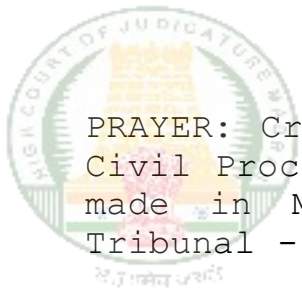
1.Pandiammal
2.Sumathi
3.Priya
4.Vaishnavi

... Petitioners/Respondents

Vs.

The Managing Director,
Tamil Nadu State Express Transport Corporation,
Pallavan Salai, Chennai - 600 002.

... Respondent/ Appellant



PRAYER: Cross Appeal filed under Order 41 Rule 32 of the Code of Civil Procedure, against the judgment and decree dated 27.04.2012, made in M.C.O.P.No.74 of 2011, by the Motor Accident Claims Tribunal - cum - Principal District Court, Theni.

WEB COPY

For Petitioners : Mr.M.Senthil Kumar

For Respondent : Mr.P.Prabhakaran

COMMON JUDGMENT

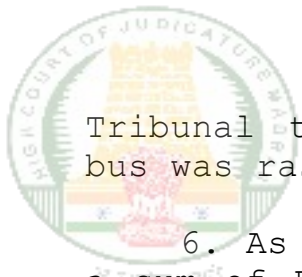
C.M.A.(MD)No.1033 of 2013 has been preferred by the appellant-Transport Corporation against the award dated 27.04.2012, passed in M.C.O.P.No.74 of 2011, by the Motor Accident Claims Tribunal - cum - Principal District Court, Theni.

2. Cross Objection (MD)No.2 of 2014 has been filed by the claimants against the award of Rs.6,02,000/- (Rupees Six Lakhs and Two Thousand only) as compensation for the death of one Murugan, driver cum cleaner, aged about 43 years, earning about Rs.15,000/- (Rupees Fifteen Thousand only) per month, in the accident occurred on 04.12.2010, when he was travelling in the mini lorry.

3. The case of the respondents/claimants is that the deceased was travelling in the mini lorry as a cleaner and when the driver of the mini lorry was driving the mini lorry, the bus belonging to the appellant-Transport Corporation which was driven in a rash and negligent manner, came behind and hit the mini lorry. Resultantly, the deceased was thrown out of the mini lorry and got injured and succumbed to injuries.

4. Whereas the case of the appellant-Transport Corporation is that the deceased was standing in front of a mini lorry which was parked on the National Highways without any signal. Therefore, the appellant-Transport Corporation bus hit the mini lorry and by the impact of the collision, the mini lorry moved and mowed down the deceased. Further, on appreciation of evidence, especially, based on Ex.P.1 - F.I.R and also the evidence of P.W.2 - eyewitness, the Tribunal believed the case of the respondents/claimants and found that the driver of the appellant-Transport Corporation bus alone was rash and negligent and caused the accident. Therefore, the said finding has to be confirmed.

5. Assuming for a moment, even if one goes by the version given by the appellant-Transport Corporation, even then, the driver of the appellant-Transport Corporation should have been vigilant enough to see that he did not dash against a parked vehicle and therefore, in any event, even by both the versions, the appellant-Transport Corporation bus alone was negligent. Further, there is no contra evidence adduced by the appellant-Transport Corporation. Hence, the finding given by the



Tribunal that the driver of the appellant-Transport Corporation bus was rash and negligent, is confirmed.

6. As far as the compensation is concerned, the Tribunal took a sum of Rs.4,500/- (Rupees Four Thousand and Five Hundred only) as monthly income by taking a sum of Rs.150/- (Rupees One Hundred and Fifty only) as wage per day and deducted 1/3rd amount towards his personal expenses and determined the loss of income at Rs.5,76,000/- (Rupees Five Lakhs and Seventy Six Thousand only) and awarded the total compensation of Rs.6,02,000/- (Rupees Six Lakhs and Two Thousand only) including the amounts under the other heads.

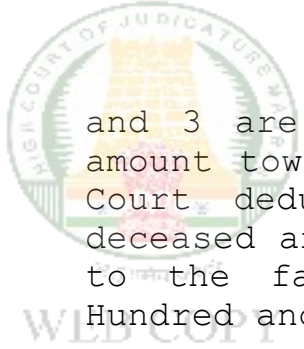
7. Though Mr.P.Prabhakaran, learned Counsel for the appellant-Transport Corporation would submit that the Tribunal took the higher amount as monthly income, Mr.M.Senthil Kumar, learned Counsel for the respondents/claimants would submit that the amount determined by the Tribunal as monthly income is too low.

8. There is no doubt that there is no positive proof regarding the monthly income and that too, for a monthly income of Rs.15,000/- (Rupees Fifteen Thousand only). However, the accident occurred on 04.12.2010 and therefore, this Court is inclined to determine the monthly income of the deceased at Rs.6,500/- (Rupees Six Thousand and Five Hundred only) as in 2010, it is difficult to get a manual worker for the monthly income below than Rs.6,500/- (Rupees Six Thousand and Five Hundred only). That apart, the determination is in consonance with the judgment of the Honourable Supreme Court in **Syed Sadiq v. Divisional Manager, United India Insurance Co. Ltd.** reported in **2014 (1) TNMAC 459 (SC)**, wherein for a vegetable vendor, who got injured in an accident occurred on 14.02.2008, a sum of Rs.6,500/- (Rupees Six Thousand and Five Hundred only) per month was fixed. Whereas in the case on hand, the accident occurred in the year 2010.

9. The age of the deceased as per Ex.P.2 - post-mortem certificate, is 38. Whereas the copy of the ration card (issued during May 2005) produced before this Court would show that the deceased was aged about 43 years. Therefore, this Court is inclined to follow the age of the deceased as shown in the ration card produced before this Court as the information was provided by the deceased himself while applying for the ration card. Therefore, 30% has to be added towards future prospects as per the judgment of the Honourable Supreme Court in **Sarla Verma v. Delhi Transport Corporation** reported in **2009 (2) TN MAC 1 (SC)** and accordingly, the monthly income of the deceased would be Rs.8,450/- (Rupees Eight Thousand Four Hundred and Fifty only) [Rs.6,500/- + Rs.1,950/-].

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10. Though the size of the family is 4 and the respondents 2



and 3 are married persons, the Tribunal rightly deducted 1/3rd amount towards personal expenses of the deceased. Therefore, this Court deducts 1/3rd amount towards personal expenses of the deceased and accordingly, the monthly contribution of the deceased to the family would be Rs.5,633/- (Rupees Five Thousand Six Hundred and Thirty Three only) [Rs.8,450/- - Rs.2,817/-].

11. The multiplier as per the age given by the deceased himself while applying for the ration card is 43, but as per Ex.P.2 - post-mortem certificate, the age of the deceased is 38. As already observed, this Court follows the multiplier '14' taking note of the age of the deceased given in the ration card and therefore, the multiplier '16' adopted by the Tribunal is reduced to '14'.

12. Accordingly, the loss of income would come to **Rs.9,46,344/-** (Rupees Nine Lakhs Forty Six Thousand Three Hundred and Forty Four only) [Rs.5,633/- X 12 X 14].

13. The Tribunal awarded a sum of Rs.10,000/- (Rupees Ten Thousand only) towards loss of consortium and the same is enhanced to **Rs.1,00,000/-** (Rupees One Lakh only) as per the judgment of the Honourable Supreme Court in **Rajesh and others v. Rajbir Singh and others** reported in **(2013) 9 Supreme Court Cases 54**, and

14. Similarly, the respondents 2 to 4 are daughters of the deceased and they were given only a sum of Rs.2,000/- (Rupees Two Thousand only) each towards loss of love and affection. This Court enhances the same to a sum of **Rs.20,000/-** (Rupees Twenty Thousand only) **each** and totally, a sum of **Rs.60,000/-** (Rupees Sixty Thousand only) is awarded by this Court under the head 'loss of love and affection'.

15. A sum of Rs.5,000/- (Rupees Five Thousand only) was awarded towards funeral expenses and a sum of Rs.5,000/- (Rupees Five Thousand only) was awarded towards loss of estate and the said amounts are too low and therefore, a sum of **Rs.25,000/-** (Rupees Twenty Five Thousand only) **each**, is awarded under the heads 'funeral expenses' and 'loss of estate' including transportation charges.

16. The rate of interest at **7.5%** per annum awarded by the Tribunal remains unaltered.

17. Accordingly, the respondents 1 to 4/claimants are entitled to a sum of Rs.11,56,344/- (Rupees Eleven Lakhs Fifty Six Thousand Three Hundred and Forty Four only) rounded off to a sum of Rs.11,50,000/- (Rupees Eleven Lakhs and Fifty Thousand only) along with interest at 7.5% per annum from the date of petition till date of realisation and proportionate costs.



18. In the result,

(i) C.M.A(MD)No.1033 of 2013 is dismissed. Consequently, the connected miscellaneous petition is also dismissed. No costs;

(ii) Cross Objection (MD)No.2 of 2014 is partly allowed. No costs;

(iii) The respondents 1 to 4/claimants are entitled to a sum of Rs.11,56,344/- (Rupees Eleven Lakhs Fifty Six Thousand Three Hundred and Forty Four only) rounded off to a sum of **Rs.11,50,000/-** (Rupees Eleven Lakhs and Fifty Thousand only) along with interest at 7.5% per annum from the date of petition till date of realisation and proportionate costs;

(iv) The first respondent/claimant is entitled to a sum of **Rs.5,00,000/-** (Rupees Five Lakhs only) and the respondents 2 and 3/claimants 2 and 3 are entitled to a sum of **Rs.2,00,000/-** (Rupees Two Lakhs only) **each**. The fourth respondent/fourth claimant is entitled to a sum of **Rs.2,50,000/-** (Rupees Two Lakhs and Fifty Thousand only);

(v) The appellant-Transport Corporation is directed to deposit the entire compensation amount to the credit of M.C.O.P.No.74 of 2011, on the file of the Motor Accident Claims Tribunal - cum - Principal District Court, Theni, 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 entire compensation amount along with accrued interest and proportionate costs, as per the apportionment made by this Court, to the respective Personal Savings Bank Account Numbers of the respondents 1 to 4/claimants through RTGS/NEFT system after getting their Account Details, within a period of **two weeks thereafter**; and

(vii) The respondents 1 to 4/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(CS 1)

/True Copy/

Sub Assistant Registrar

rsb

To

1.The Principal District Judge-cum
Motor Accident Claims Tribunal

<https://hcservices.ecourts.gov.in/hcservices/>

Theni.



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

+1cc to Mr.Prabhakaran,Standing Counsel, Sr.No. 6987

+2cc to Mr.M.Senthil Mumar,Advocate Sr.No. 7462,7463

JAM/06.03.17 /SV-MMS/SAR 3/ 6p-6c

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