



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.10.2017

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
AND
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A(MD)No.1588 of 2013

and

M.P(MD)No.1 of 2013

The Managing Director,
Tamil Nadu State Transport Corporation,
(Kumbakonam Division II)
Periamilaguparai, Trichy - 1.

: Appellant/Respondent

Vs.

1.Muthulakshmi
2.Minor S.Mahendiran
3.Minor S.Subathra
(2nd and 3rd minor respondents are
represented by their mother natural
guardian the 1st respondent)

4.Periammal : Respondents/Claimants

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree made in MCOP No.1695 of 2011, dated 30.10.2012 on the file of the Motor Accidents Claims Tribunal/II Additional Sub Court, Tiruchirappalli.

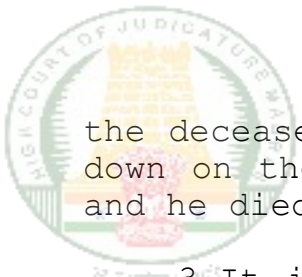
For Appellant : Mr.P.Prabhakaran
For Respondents : Mr.N.Sudhagar Nagaraj

J U D G M E N T

[Judgment of the Court was delivered by K.KALYANASUNDARAM, J]

Challenging the award passed by the Motor Accident Claims Tribunal (II Additional Sub Court), Tiruchirappalli, in MCOP No.1695 of 2011, dated 30.10.2012, the Transport Corporation has preferred this appeal.

2.MCOP No.1695 of 2011 was filed by the legal-heirs of the deceased Selvaraj, who died in an accident on 24.03.2009, claiming compensation of Rs.20,00,000/-. According to the claimants, the deceased Selvaraj was a cyclist and on 24.03.2009, when he was proceeding on Trichy-Thuraiyur main road towards Thuraiyur, a bus IN-45-N-1851 belonging to the appellant Transport Corporation was driven by its driver in a rash and negligent manner, dashed against



the deceased. In the impact, the deceased was thrown away and fell down on the road and sustained multiple injuries all over the body and he died instantaneously.

3. It is the further case of the claimants that at the time of accident, the deceased was aged about 38 years and he was working as a Masthoor in Tamil Nadu Electricity Board and was getting not less than Rs.7,000/- per month.

4. Resisting the claim petition, the appellant Transport Corporation filed a counter affidavit, denying the involvement of the vehicle in the accident. They also disputed the age, income and the avocation of the deceased.

5. Before the tribunal, the first claimant examined as PW1 and one Nullusamy as PW2 and documents Exs.P1 to P6 were marked. On the side of the appellant, one witness was examined and one document was marked.

6. Upon consideration of oral and documentary evidence, the tribunal came to the conclusion that the accident was due to the rash and negligent driving of the driver of the bus and awarded compensation of Rs.13,75,050/- along with interest @ 7.5% per annum. Aggrieved by the judgment and decree, the present appeal has been filed.

7. We have heard Mr.P.Prabhakaran, learned counsel for the appellant and Mr.N.Sudhagar Nagaraj, learned counsel for the respondents and perused the materials available on record.

8. Learned counsel for the appellant submitted that the tribunal has failed to fix the entire negligence on the deceased, who entered the main road without following the rules. But we are not able to agree with the submission of the learned counsel for the appellant for the reason that the tribunal, relying on the evidence of PW2, who is an eye witness to the occurrence and Ex.P1 First Information Report, decided the issue against the appellant.

9. The other contention of the appellant is that the award is on the higher side. In the case on hand, the deceased died at the age of 40 was proved by producing Ex.P4 (Death Certificate) and Ex.P6 (Salary Certificate) shows that the deceased was earning Rs.6,420/- per month. After adding 50% for future prospectus, the month income was arrived at Rs.9,630/-. As per the decision in Sarla Verma, 1/3rd is deducted for personal expenses and multiplier '15' was applied to determine the loss of dependency, which comes to Rs.13,00,050/- (Rs.9,630/- x $\frac{3}{4}$ x 15 x 12). In addition, the tribunal has awarded Rs.15,000/- towards loss of consortium to the first claimant; Rs.55,000/- towards loss of love and affection to the claimants and Rs.5,000/- towards funeral expenses. In total, the tribunal has awarded Rs.13,75,050/- together with interest @ 7.5% p.a. Since,



the award was made on proper appreciation of evidence and it is reasonable, the contention of the learned counsel for the appellant is rejected and the award is confirmed.

10. In the result, the Civil Miscellaneous Appeal is dismissed. It is represented that the entire award amount has already been deposited. Hence, the major claimants are permitted to withdraw their share, less already withdrawn and the share of the minor shall be deposited in any one of the Nationalized Bank in a Fixed Deposit scheme, till she attains majority. The mother of the minor claimant is permitted to withdraw the interest of minor share once in three months for the welfare of the minor. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar (T&P)

/True Copy/

Sub Assistant Registrar

To

1. The II Additional Subordinate Judge,
Motor Accidents Claims Tribunal/
II Additional Sub Court,
Tiruchirappalli.

2. The Record Keeper,
V.R Section,
Madurai Bench of Madras High Court,
Madurai. (Two Copies)

+1cc to M/S.P.Prabhakaran, Advocate SR.No. 81665
+1cc to M/S.N.Sudhagar Nagaraj, Advocate SR.No. 81729

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