



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 13.06.2017

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

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C.M.A(MD)Nos.1820, 1821 and 1822 of 2013
and
M.P(MD)Nos.3,3 and 3 of 2013

The Managing Director,
Tamil Nadu State Transport Corporation,
Periamilaguparai,
Trichy-1.

... Appellant
in all C.M.As

Vs.

R.Thiyagarajan

...Respondent
in C.M.A.(MD)No.1820 of 2013

1.Saridha
2.Minor.Pavithra
3.Dhanam

(The 2nd respondent is minor represented by
her mother and natural guardian Saridha, the
first respondent)

...Respondents 1 to 3
in C.M.A.(MD)No1821 of 2013

R.Jeganathan

...Respondent
in C.M.A.(MD)No1822 of 2013

Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 07.08.2012 made in M.C.O.P.Nos.1458, 1543 and 1551 of 2010, on the file of the Motor Accidents Claims Tribunal/II Additional District Court, Tiruchirappalli.

For Appellant

: Mr.P.Prabhakaran

For Respondents

: Mrs.T.Kokilavani

(In all C.M.A.s)

for Mr.C.Padmaraj

COMMON JUDGMENT

Challenging the award passed in M.C.O.P.Nos 1458, 1543 and 1551 of 2010, the present appeals have been filed.

2.M.C.O.P.No.1458 of 2010 was filed by one Thiagarajan seeking compensation of Rs.6 lakhs for the injuries sustained by him. M.C.O.P.No.1543 of 2010 was filed by the wife, daughter and son of the deceased Thiru Murugesan @ Murugesan seeking compensation of Rs.8 lakhs for the death of said Thiru Murugesan @ Murugesan.



3.M.C.O.P.No.1551 of 2010 was filed by one R.Jeganathan seeking compensation of Rs.2 lakhs for the injuries sustained by him in the road accident that had occurred on 14.04.2010.

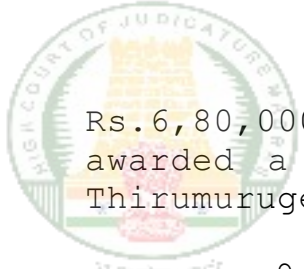
4.The case of the claimants in the three M.C.O.Ps was that on 14.04.2010 when Jeganathan was riding his motorcycle bearing Registration No.TN-45-AZ-2160 along with Thiagarajan and the deceased Thirumurugesan @ Murugesan as pillion riders on the extreme left side of the Dindigul-Manapparai road near railway gate towards east, the bus belonging to the respondent corporation bearing Registration No.TN-45-N-2159 which was driven by its driver in a rash and negligent manner in the opposite direction, dashed against the motorcycle. Due to the said impact, Thirumurugesan @ Murugesan sustained multiple grievous injuries and he was admitted to Manapparai Government Hospital where he succumbed to the injuries. The others namely, Thiagarajan and Jeganathan suffered grievous injuries.

5.It was further claimed that Thirumurugesan @ Murugesan was aged about 31 years and was earning Rs.300/- per day and his legal representatives sought for a compensation of Rs.8,00,000 in M.C.O.P.No.1543 of 2010. The petitioner in M.C.O.P.No.1458 of 2010, namely, R.Thiagarajan claimed that he was aged about 30 years was earning Rs.5,000/- per month as a water tank Operator and milk vendor and sought for compensation of Rs.6 lakhs. The petitioner in M.C.O.P.No.1551 of 2010 namely, R.Jeganathan claimed that he was aged 27 years and was earning Rs.6,000/- per month as a lorry driver. He claimed Rs.2,00,000/- as compensation.

6.The respondent corporation while admitting the accident would claim that the three persons were riding the motorcycle in an inebriated condition under the influence of alcohol and it is the driver of the two wheeler who drove the vehicle in a rash and negligent manner and dashed against the bus resulting in the accident.

7.The Tribunal upon consideration of the evidence on record, both oral and documentary, found that the driver of the bus was negligent and found that it is the negligence on the part of driver of the bus which has caused the accident. On the quantum of compensation, the Tribunal found that the petitioner in M.C.O.P.No.1458 of 2010 namely, R.Thiagarajan had suffered 29% disability and awarded a sum of Rs.99,600/- as compensation.

8.M.C.O.P.No.1543 of 2010 is a fatal case. The Tribunal fixed the age of the deceased as 28 years and taking his income as Rs.5,000/- per month and after deducting one third towards his personal expenses arrived at annual dependency of Rs.40,000/-. Applying multiplier of '17' the tribunal awarded a sum of



Rs.6,80,000/- towards loss of dependency. In all, the Tribunal awarded a sum of Rs.7,65,000/- as compensation for a death of Thirumurugesan @ Murugesan.

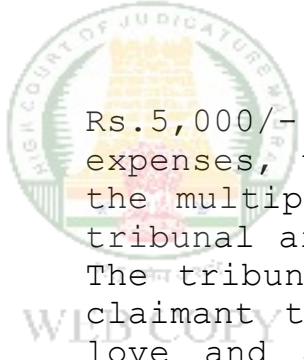
9. So far as the petitioner in M.C.O.P.No.1551 of 2010 is concerned, the Tribunal assessed his disability at 25% and taking his age as 28 years, awarded a sum of Rs.50,000/- towards disability, Rs.20,000/- towards pain and suffering, Rs.21,600/- towards medical expenses based on Ex.P.16, Rs.3,000/- for loss of income during the treatment period, Rs.5,000/- for extra nourishment. In all, the Tribunal awarded a sum of Rs.99,600/- as compensation.

10. Heard Mr.P.Prabhakaran, learned counsel for the appellant and Mrs.T.Kokilavani, learned counsel for the respondents.

11. Mr.P.Prabhakaran, learned counsel for the appellant would strenuously contend that the three persons had travelled in a two wheeler in violation of Section 128 of the Motor Vehicles Act and therefore, contributory negligence should be fixed on the claimants. Of course, the transport corporation would plead that the three claimants were in an inebriated condition, but the said pleading was not established before the Tribunal.

12. Mrs.T.Kokilavani, learned Counsel appearing for the respondents would rely upon a Division Bench judgment of this Court in **The Branch Manager, United India Insurance Company Ltd., Vs. Uma and others** reported in **2011 (1) TNMAC 136 (DB)** wherein it was held that the very fact that three persons travelled in a motorcycle does not by itself amount to contributory negligence. The Division Bench further went on to observe that unless it is proved that the fact that three persons had travelled in the motorcycle had contributed to the accident, there cannot be an assumption of contributory negligence. In view of the above pronouncement of the Division Bench, we have to see whether the appellant Corporation has established that the very fact that three persons had travelled in motorcycle had contributed to the accident. Though the appellant Corporation has taken the plea of contributory negligence, no substantive evidence was adduced to establish the said fact and even the driver of the bus who is the employee of the corporation was not examined. Therefore I do not think that the Court could presume contributory negligence on the part of the claimants merely because three persons travelled in the motorcycle.

13. As regards the quantum in C.M.A(MD)No.1821 of 2013 which arises out of M.C.O.P.No.1543 of 2010 in which the compensation is sought for the death of Thirumurugesan @ Murugesan. The Tribunal has taken the monthly income at



Rs.5,000/- and after deducting one-third towards personal expenses, the annual dependency was fixed at Rs.40,000/-. Adopting the multiplier of '17', considering the age of the deceased, the tribunal arrived at a sum of Rs.6,80,000/- for loss of dependency. The tribunal had also awarded a sum of Rs.50,000/- to the first claimant towards loss of consortium, Rs.25,000/- towards loss of love and affection and Rs.5,000/- towards funeral expenses. In all, the Tribunal awarded a sum of Rs.7,65,000/- as compensation. Since the compensation awarded is just and reasonable, I do not find any illegality or irregularity in the award passed by the Tribunal.

14.C.M.A. (MD)No.1822/13 which arises out of M.C.O.P.No.1551 of 2010. The Tribunal has fixed disability at 25% based on the evidence of P.W.4. The claimant sustained a fracture in his skull which has resulted in headache, giddiness and lack of concentration. Considering the age of the petitioner (i.e.) 28 years, the Tribunal has awarded a sum of Rs.50,000/- for disability, Rs.20,000/- towards pains and sufferings, Rs.21,600/- for medical expenses based on Ex.P.16, Rs.3,000/- for loss of income during the period of treatment and Rs.5,000/- for extra nourishment. In all, the Tribunal awarded a sum of Rs.99,600/- as compensation. Considering the age of the claimant and the nature of injuries though which would not result in permanent disability, the Tribunal was right in granting a sum of Rs.2000/- for each percentage of disability. Therefore, I find no reason to interfere with the award passed by the Tribunal.

15.Insofar as C.M.A. (MD)No.1820 of 2013 which arises out of M.C.O.P.No.1458 of 2010 is concerned, the Tribunal has fixed the disability at 29% based on the evidence of P.Ws.2 and 4. Considering the age of the deceased namely, 28 years, the Tribunal has awarded a sum of Rs.58,000/- for disability at the rate of Rs.2000/- per percentage of disability, Rs.20,000 towards pain and sufferings, Rs.13,600/- towards medical expenses based on Ex.P.14, Rs.3,000 for loss of income during period of treatment and Rs.5,000/- for extra nourishment. The Tribunal has found that the claimant had suffered fracture in his right frontal bone with thin EDH present adjacent to it with mass effect and hemorrhagic contusion right temporo parietal region with fracture right zygomatic arch. The nature of the injuries definitely justified the percentage of disability assessed by the doctors. The compensation awarded by the Tribunal under other heads is also very reasonable. Therefore I do not find any reason to interfere with the award of the Tribunal.

16.In the result, the Civil Miscellaneous Appeals are dismissed with costs. Confirming the award passed by the Tribunal in M.C.O.P.Nos.1458, 1543 and 1551 of 2010, dated 07.08.2012, on the file of the Motor Accidents Claims Tribunal/II Additional District



Court, Tiruchirappalli. No costs. Consequently, M.P(MD)Nos.3,3 and 3 of 2010 are closed.

Sd/-
Assistant Registrar(Co)

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Sub Assistant Registrar

To

1.The Motor Accidents Claims Tribunal
/II Additional District Court, Tiruchirappalli.

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

+3ccs to Mr.C.Padmaraj, Advocate in SR.No.60066,60067,60068
+3ccs to Mr.P.Prabhakaran, Advocate in SR.No.60088,60089,60090

rmi/vsg
AE/MR SAR1/13.07.2017/5P/9C

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