



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.09.2017

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD)No.220 of 2013andM.P(MD) .No.1 of 2013andCros.Obj(MD)No.30 of 2013C.M.A(MD)No.220 of 2013

The General Manager,
Tamil Nadu State Transport Corporation Limited,
Madurai Division,
Vannarpettai, Tirunelveli-3. ... Appellant/ Respondent
Vs.

1.J.Srividya
2.R.Sankar
3.Minor R.Jayaram
4.S.Rajalakshmi
(Minor represented by his mother/1st respondent
herein) ... Respondents/Petitioners

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the order and Decree dated 01.11.2010 passed in MCOP.No.577 of 2009 on the file of the Motor Accident Claims Tribunal/Additional District Judge cum Fast Track Court No.2, Tirunelveli.

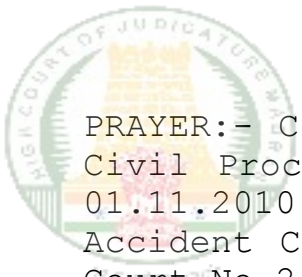
For Appellant : Mr.M.Prakash
For Respondents : Mr.R.Ponkarthikeyan

Cross.Obj(MD)No.30 of 2013

1.Srividya
2.R.Sankar
3.Minor R.Jayaram
4.S.Rajalakshmi
(minor rep. by his mother/1st respondent herein) ... Cross Objectors/ Respondents

Vs.

The General Manager,
Tamil Nadu State Transport Corporation Limited,
Madurai Division,
Vannarpettai, Tirunelveli-3. ... Respondent/Appellant



PRAYER:- Cross Objection has been filed under Order 41 Rule 22 of Civil Procedure Code 1908 against the Judgement and Decree dated 01.11.2010 passed in MCOP.No.577 of 2009 on the file of the Motor Accident Claims Tribunal/Additional District Judge cum Fast Track Court No.2, Tirunelveli.

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For Cross Objectors : Mr.R.Ponkarthikeyan
For Respondents : Mr.M.Prakash

COMMON JUDGMENT

Since both the Civil Miscellaneous Appeal and the Cross Objection are arising out of the same accident, both the Civil Miscellaneous Appeal and the Cross Objection are disposed of by this Common judgment.

2. Both the Civil Miscellaneous Appeal and the Cross Objection have been filed against the award dated 01.11.2010 passed in M.C.O.P.No.577 of 2009 on the file of the Motor Accident Claims Tribunal/Additional District Judge-cum-Fast Track Court No.II, Tirunelveli.

3. It is a case of fatal accident, which took place on 06.08.2008 at 3.00 p.m., on the North bye-pass road, near Moortheswaram Vilakku.

4. It is the case of the claimants before the Tribunal that on the date of accident, the deceased by name Ramanarayanan travelled in the bus bearing Registration No.TN 72 N 1008, from Tirunelveli to Kovilpatti, when the bus reaches Manimutheeswaram, the Driver of the bus drove the vehicle in a rash and negligent manner and applied a sudden brake and due to that, the deceased was thrown out of the bus and sustained injuries and died on the spot.

5.The claimants filed an application in M.C.O.P.No.577 of 2009 on the file of the Motor Accident Claims Tribunal/Additional District Judge-cum-Fast Track Court No.II, Tirunelveli, seeking compensation.

6.Before the Tribunal, the claimants examined three witnesses as P.Ws.1 to 3 and marked seventeen documents as Exs.P1 to P17. On the side of the Transport Corporation, two witnesses were examined as R.Ws.1 and 2 and no document was marked on their side.

7.The Tribunal after considering the pleadings, oral and documentary evidences and the arguments advanced on either side and also appreciating the evidences on record held that the accident occurred only due to the rash and negligent driving of the bus belonging to the Transport Corporation and therefore, the Transport Corporation to pay compensation of Rs.13,50,000/-.



8. Against which, the appellant/Transport Corporation has filed C.M.A(MD)No.220 of 2013 challenging the quantum and the claimants have filed Cros. Obj(MD)No.30 of 2013 seeking enhancement of compensation.

9. The learned counsel for the claimants would submit that at the time of accident, the deceased was working as an Auditor and was earning a sum of Rs.60,000/-, but, without considering the same, the Tribunal has taken a sum of Rs.12,500/- as monthly income of the deceased and calculated the loss of income and further, no future prospects has been added while calculating the loss of income and the compensation awarded under the other heads are also on lower side and the same is to be enhanced.

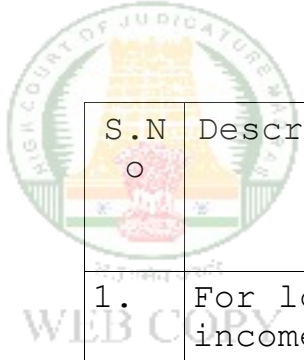
10. The learned counsel appearing for the Transport Corporation submitted that when the income of the deceased was not permanent, the Tribunal erred in fixing the monthly income of the deceased as Rs.12,500/- and therefore, the compensation awarded by the Tribunal is to be reduced.

11. Heard the submissions made on either side and perused the materials available on record.

12. With regard to quantum of compensation, at the time of accident, the deceased was stated to be working as an Auditor and therefore, after considering the evidences, the Tribunal fixed a sum of Rs.12,500/- as monthly income of the deceased. However, no future prospects has been awarded as per the ratio laid down in Rajesh and others .vs. Rajbir Singh and others reported in 2013(3) CTC 883. Therefore, as the age of the deceased was found to be as 49 years, 30% of the amount is added towards future prospects, then monthly income would be $\text{Rs.12,500/-} + 30\% = \text{Rs.16250/-}$.

13. Considering the size of the family, $\frac{1}{3}$ rd amount has to be deducted towards personal expenses. The loss of income after deduction would be $\text{Rs.12,500} + 30\% - \frac{1}{3} = \text{Rs.10833/-}$ and since the age of the deceased was found to be 49 years, the appropriate multiplier to be applied as per the Smt.Sarla Verma .vs. Delhi Transport Corporation reported in 2009(2) TN MAC 1(SC) case, is '13' and therefore, the loss of income would be $\text{Rs.12500/-} + 30\% - \frac{1}{3} \times 12 \times 13 = \text{Rs.16,89,948/-}$ and therefore, the compensation awarded for loss of income is enhanced to Rs.16,89,948/- and the other heads are confirmed. Further, while awarding compensation, the Tribunal awarded 8% interest and the same is reduced to 7.5%.

14. In view of the settled position of law, this Court modifies the award of the Tribunal by enhancing the compensation,



S.N o	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	For loss of income	13,00,000	16,89,948	Enhanced
2.	For Funeral Expenses	10,000	10,000	confirmed
3.	For loss of love and affection	40,000	40,000	confirmed
	Total	Rs.13,50,000	Rs.17,39,948 rounded of to Rs.17,40,000	By enhancing a sum of Rs.3,90,000/-

15. In the result,

(i) C.M.A(MD)No.220 of 2013 is dismissed. No Costs. Consequently, connected Miscellaneous Petition is closed.

(ii) Cross. Objection (MD)No.30 of 2013, is partly allowed, enhancing the award of the Tribunal from Rs.13,50,000/- (Rupees Thirteen Lakhs and Fifty Thousand Only) to a sum of Rs.17,40,000/- (Rupees Seventeen Lakhs and Forty 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; It is made clear that the Cross Objectors/Claimants are not entitled to claim interest for the delay period occurred in filing the Cross Objection.

(iii).The Transport Corporation is directed to deposit the entire award amount of Rs.17,40,000/- (Rupees Seventeen Lakhs and Forty Thousand Only) with accrued interests and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit being made, the major claimants 1, 2 and 4 are permitted to withdraw their share as apportioned by the Tribunal, with proportionate interests and costs. The Tribunal is directed to deposit the share of the minor claimant in any one of the Nationalised Banks, in a Fixed Deposit scheme, till he attains majority. The first respondent, who is the mother and guardian of the minor claimant, is permitted to withdraw the accrued interest once in three months directly from the bank, only for the welfare of minor. No Costs.

Sd/-

Assistant Registrar(RTI)

/True Copy/



To,

The Additional District Judge cum Fast Track Court No.2,
Motor Accident Claims Tribunal,
Tirunelveli.

COPY TO:

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

+1cc to M/S.M.Prakash, Advocate SR.No. 77464

+1cc to M/S.R.Ponkarthikeyan, Advocate SR.No. 77781

C.M.A (MD) No.220 of 2013
and
Cros.Obj (MD) No.30 of 2013
08.09.2017

PM

JM/SKN RSK/SAR 3/09.11.2017/5P/5C