



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.08.2017

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A (MD) No.1248 of 2011

and

M.P. (MD) No.2 of 2011

The Managing Director,
Tamil Nadu State Transport Corporation,
Kumbakonam Division-1,
Kumbakonam Taluk, DM & Town. ... Appellant / Respondent

Vs.

1.Ajitha
2.Minor Athikesavan
3.Minor Anbukarasan
(Minors rep. by their Guardian/
Mother, 1st Respondent
herein- Ajitha) ... Respondents / Petitioners

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to set aside the judgment and Decree passed in M.C.O.P.No.195 of 2007 dated 10.11.2009, on the file of Motor Accident Claims Tribunal-cum-Subordinate Court, Pattukottai.

For Appellant : Mr.M.Prakash

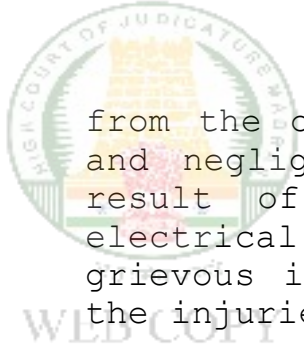
For R-1 to R-3 : Mr.S.Deenadayalan

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Transport Corporation against the award passed in M.C.O.P.No.195 of 2007 by the Motor Accident Claims Tribunal (Subordinate Court), Pattukottai, dated 10.11.2009.

2. It is a case of fatal accident took place on 03.01.2007 at about 7.45 a.m., at Pattukottai - Muthupettai main road near Thuvarankurichi Mariamman Kovil Arch.

3. It is the case of the claimants before the Tribunal that on the date of accident, when the deceased by name Mani was going in his motorcycle on the left side of the road, the Transport Corporation bus bearing Registration No.TN 49 N 1164, which came



from the opposite direction was driven by its driver in a rash and negligent manner and dashed against the deceased and as a result of which, the deceased was thrown away against the electrical post and in the said accident, the deceased sustained grievous injuries all over the body and thereafter, succumbed to the injuries.

4. The claimants filed an application in M.C.O.P.No.195 of 2007 on the file of the Motor Accident Claims Tribunal (Subordinate Court), Pattukottai, seeking compensation.

5. Before the Tribunal, the respondents 1 to 3/Claimants examined two witnesses as P.Ws.1 and 2 and marked eight documents as Ex.P.1 to Ex.P.8. On the side of the appellant/Transport Corporation two witnesses were examined as R.W.1 and R.W.2 and no document was marked on their side.

6. The Tribunal, after considering the pleadings, oral and documentary evidences 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 appellant/Transport Corporation and therefore, directed the appellant to pay a sum of Rs.4,24,000/-, as compensation.

7. Against which, the appellant/Transport Corporation has filed this present appeal challenging the liability as well as quantum.

8. With regard to negligence, the learned counsel for the appellant/Transport Corporation submitted that the Tribunal erred in holding that the driver of the appellant drove the vehicle in a rash and negligent manner, since the deceased himself voluntarily dashed against the E.B. Post and sustained fatal injuries and therefore, the negligence fixed on the driver of the Transportation Corporation bus is liable to be set aside.

9. With regard to quantum, the learned counsel for the appellant submitted that the compensation awarded by the Tribunal for loss of income at Rs.3,84,000/- is on higher side and therefore, the award of the Tribunal warrants interference at the hands of this Court.

10. With regard to negligence, the learned counsel for the respondents submitted that after elaborately discussing about the manner of accident in paragraph Nos.17 to 20 of the award, the Tribunal has fixed the negligence on the driver of the Transport Corporation bus and therefore, the award of the Tribunal does not



11. With regard to quantum, the learned counsel for the respondents submitted that considering the age of the deceased, the compensation arrived at by the Tribunal is on the lower side and therefore, the same is to be enhanced.

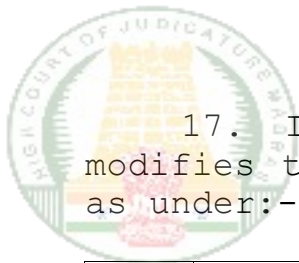
12. Heard the submissions made on either side and perused the materials available on record.

13. A perusal of the award shows that based on the evidence, after elaborately discussed about the accident, the Tribunal fixed the negligence on the part of the Driver of the Transport Corporation bus and therefore, the finding of the Tribunal with regard to negligence, is confirmed.

14. With regard to quantum, it is an unfortunate case, where the learned Judge had awarded lesser compensation. Even though the claimants have not filed any appeal seeking enhancement of compensation, this Court feels that it is a case, where a widow with two children, was left in lurch and therefore, ends of justice would be met only if the compensation is increased on the head of loss of income.

15. With regard to quantum of compensation, at the time of accident, the deceased was stated to be doing wood business and was earning a sum of Rs.6,000/- per month. But, the Tribunal took only Rs.3,000/- as monthly income, which is very low, in my considered view. Therefore, applying the ratio laid down in the latest judgments, this Court fixes a sum of Rs.4,000/- as notional monthly income of the deceased. Further, 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**. Since the age of the deceased was found to be 35 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 '16'. Since the age of the deceased was 35 years, 50% has to be added towards future prospects. If 50% is added towards future prospects, the monthly income would be Rs.4,000/- + 50% = Rs.6000/-.

16. Considering the number of family members, as per the judgement **Smt.Sarla Verma .vs. Delhi Transport Corporation reported in 2009(2) TN MAC 1(SC)**, $1/3^{rd}$ has to be deducted towards personal expenses. The loss of income after deduction would be $\text{Rs.4000} + 50\% - 1/3^{rd} = \text{Rs.4000/-}$ and therefore, the loss of income would be $\text{Rs.4000/-} + 50\% - 1/3 \times 12 \times 16 = \text{Rs.7,68,000/-}$, and therefore, the compensation awarded for loss of income is enhanced to Rs.7,68,000/- and the other heads are confirmed.



17. In view of the settled position of law, this Court modifies the award of the Tribunal by enhancing the compensation, as under:-

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	For loss of income	3,84,000	7,68,000	enhanced
2.	For loss of love and affection (for minors)	15,000	15,000	confirmed
3.	For Transportation	5,000	5,000	confirmed
4.	For Funeral expenses	5,000	5,000	Confirmed
5.	For consortium	10,000	10,000	confirmed
6.	For medical expenses	5,000	5,000	confirmed
	Total	Rs.4,24,000	Rs.8,08,000	By enhancing a sum of Rs.3,84,000/-

18. In the result,

(i) This Civil Miscellaneous Appeal is dismissed. However, considering the peculiar facts and circumstances of the case, the compensation awarded by the Tribunal is enhanced from Rs.4,24,000/- (Rupees Four Lakhs and Twenty Four Thousand Only) to a sum of **Rs.8,08,000/-** (Rupees Eight Lakhs and Eight 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.

(ii) The appellant/Transport Corporation is directed to deposit the award amount to the credit of M.C.O.P., on the file of claims Tribunal within a period of eight weeks from the date of receipt of a copy of this order. On such deposit being made, the first respondent is permitted to withdraw her share as apportioned by the Tribunal, with proportionate interests and costs. The Tribunal is directed to deposit the share of the minor claimants in any one of the Nationalised Banks, in a Fixed Deposit scheme, till they attain majority. The mother and guardian of the minor claimants, is permitted to withdraw the accrued interest once in three months directly from the bank, only for the welfare of



minors. No Costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(Crl side)

/True copy/

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Sub Assistant Registrar

To,

1. The Subordinate Judge,
Motor Accident Claims Tribunal,
Pattukottai.
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1 cc to Mr.M.Prakash , Advocate in SR.No. 72734

+1 cc to Mr.S.Deenadhayalan , Advocate in SR.No. 72209

pm

AE/KK/SAR1/19.09.2017/5P/5C

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and**

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