



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 11.09.2017

CORAM:

WEB COPY

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A. (MD) Nos.255 and 2054 of 2013

and

M.P (MD) No.2 of 2013

C.M.A. (MD) No.255 of 2013

1.Akilandeswari

2.Gopinath

3.Sujatha

4.Vishnuvarthanan

... Appellants / Petitioners

vs.

Tamil Nadu State Transport Corporation,

Kumbakonam Division,

Tiruchirapalli.

... Respondent/Respondent

C.M.A. (MD) No.2054 of 2013

Tamil Nadu State Transport Corporation,

Kumbakonam Division,

Tiruchirapalli - 620 001.

... Appellant / Respondent

vs.

1.Akilandeswari

2.S.Gopinath

3.S.Sujatha

4.S.Vishnuvarthanan

... Respondents/Petitioners

Common Prayer:- Appeals are filed under Section 173 of the Motor Vehicles Act, to modify and set aside respectively the order dated 04.11.2011 passed in M.C.O.P.No.1348 of 2007 on the file of the Motor Accident Claims Tribunal / Additional District Judge, (Fast Tract Court, No.2), Tiruchirappalli and enhance the award.

In C.M.A. (MD) No.255 of 2013:

For Appellants

: Mr.M.Karunanithi

For Respondent

: Mr.P.Prabhakaran

In C.M.A. (MD) No.2054 of 2013:

For Appellant

: Mr.P.Prabhakaran

For Respondents

: M/s.K.J.Associates
M.Karunanithi

C O M M O N J U D G M E N T

Since both the Civil Miscellaneous Appeals are arising out of the same accident, both the appeals are taken up together and decided by this Common judgment.

2. Both the Civil Miscellaneous Appeal are directed under Section 173 of Motor Vehicles Act, 1988, against the award 04.11.2011 passed in M.C.O.P.No.1348 of 2007 on the file of the Motor Accident Claims Tribunal / Additional District Judge, (Fast Tract Court, No.2), Tiruchirappalli.

3.It is the case of the claimants before the Tribunal that on 11.05.2007, at about 19.50 hours, when the deceased Santhanakrishnan was riding his two wheeler, bearing registration No.TN 45 AC 8881 on Tiruchirappalli - Tanjore main road, a bus bearing registration No.TN 45 N 1389 belonging to the respondent, came in the same direction in a rash and negligent manner and hit against the two wheeler, as a result of which, the deceased died, after taking treatment. Hence, the claimants filed an application in M.C.O.P.No.1348 of 2007, on the file of the Motor Accident Claims Tribunal / Additional District Judge, (Fast Tract Court, No.2), Tiruchirappalli.

4.Before the Tribunal, the claimants examined two witnesses as P.Ws.1 and 2 and marked eleven documents as Ex.P.1 to Ex.P.11. The appellant/Transport Corporation did not let in any oral or documentary evidence, before the Tribunal.

5.The Tribunal, after considering the pleadings, oral and documentary evidence 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 bus and therefore, held that the appellant herein is liable to pay the compensation of Rs.3,91,240/-.

6.Against which, the appellant/Insurance Company has filed C.M.A.(MD) No. 2054 of 2013 challenging the quantum of compensation and the claimants have filed C.M.A.(MD)No.255 of 2013 seeking enhancement of compensation awarded by the Court below.

7.The learned counsel for the appellant/Transport Corporation submitted that the deceased alone is responsible for the cause of the accident, however, the Court below, without appreciating the facts and circumstances of the case, had fastened the liability on the insurance company. That apart, award of the Tribunal is on the higher side on various heads and that the respondent is getting family pension and that there is income loss as alleged by the claimants and therefore, compensation awarded by the Tribunal, warrants interference at the hands of

this Court. Hence, he prays for appropriate orders.

8. *Per contra*, the learned counsel for the claimants submitted that the amount awarded by the Tribunal under various heads are on the lower side and the deceased being an employee of the Government, naturally, he would receive more salary day by day. The tribunal without considering the future prospectus of the deceased awarded less compensation and therefore, the award granted by the tribunal may be enhanced.

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

10. The point for consideration in both the appeals is who is liable for the accident and what is the just and reasonable compensation?

Point:

11. On the first point, the Court below has considered the evidence of P.W.2 at paragraph No.6, who is the brother-in-law of the deceased who elicited the fact regarding the manner in which the accident had happened. He is an eye-witness also. In his evidence, he categorically stated the negligence aspect on the part of the driver of the transport corporation which is corroborated by the First Information Report lodged by him. Therefore, this Court is of the considered view that the driver of the State Transport corporation alone is responsible for the accident in question.

12. As far as quantum of compensation is concerned, at the time of accident the deceased was working as Village Administrative Officer and as per Ex.P5 and he was earning a sum of Rs.7,644/- per month and the claimants have produced salary certificate of the deceased to that effect. However, for arriving at the loss of income, the Tribunal has erroneously taken the pension of the deceased and accordingly arrived at a sum of Rs.3,000/- per month as income of the deceased, which is not correct for the simple reason that the basic principle in award of compensation is that what is lost on account of the death of the deceased has to be awarded as compensation. Irrespective of the mode of accident, even in case of natural death of the deceased the family pension would go to the benefit of the members of the family. Therefore, the receipt of family pension by the members of the family cannot be construed as a pecuniary advantage derived on account of the death of the deceased in the accident. The family pension and other benefits are not accrued in the course of accident, it is the benefit branching out of the contribution made by the deceased-employee himself from and out of his salary at the time he was alive and therefore, that factor should not be taken into account while calculating the loss of income. Further, the Court below instead of deducting 1/4th of amount towards

personal expenses, it has deducted 1/3rd amount which is also wrong. That apart, in the case on hand, as per the judgment of the Apex Court reported in *Oriental Insurance Company Limited Vs Meena Variyal*, (2007) 5 SCC 428, the correct multiplier is 9, however, the Court below has adopted multiplier 8, which is also wrong. Hence, this Court, going by the monthly income of the deceased as Rs.7,644/- as per Ex.P5, in which 1/4th is deducted, by applying multiplier 9, the amount to be awarded under the head of loss of income is Rs.6,19,164/- (Rs.5733 X 12 X 9). Further, the submission of the learned counsel for the claimants that the amount awarded towards loss of love and affection and consortium is too meagre, has a considerable force. Hence, to meet the ends of justice, the same is increased from Rs.25,000/- to Rs.35,000/-. As far as the other heads of the amount are concerned, the Court below has awarded reasonable compensation and therefore, those award amount granted by the Court below are confirmed. The rate of interest awarded by the Tribunal at 7.5% per annum is also confirmed.

13. In view of the above, this Court modifies the award of the Tribunal as below:-

S.N o	Description	Amount awarded by Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted
1.	Loss of Income	2,88,000	6,19,164	enhanced
2.	Loss of Consortium	25,000	35,000	confirmed
3.	Loss of Love and affection	40,000 (10,000x4)	40,000	confirmed
4.	funeral expenses	5,000	5,000	confirmed
5.	Loss of estate	3,240	3,240	confirmed
6.	Loss of income from the assets	20,000	20,000	confirmed
	Total	3,81,240	Rs.7,22,404	By increasing a sum of Rs.3,41,164/-

14. It is to be noted that the Tribunal awarded a sum of Rs.3,81,240/- as total compensation under various heads, but the total has been wrongly calculated as Rs.3,91,240/- instead of Rs.3,81,240/- and the same is hereby corrected.



15. In the result,

(i) This Civil Miscellaneous Appeal in C.M.A(MD)No.255 of 2013 is partly allowed, enhancing the award of the Tribunal from Rs.3,81,240/- (Rupees Three Lakhs Eight One Thousand Two Hundred Fourty Only) to a sum of Rs.7,22,404/- (Rupees Seven Lakhs Twenty Two Thousand and four hundred and four only). No costs.

(ii) The claimants are entitled to a sum of Rs.7,22,404/- along with interest at the rate of 7.5% per annum from the date of petition till date of realisation and proportionate costs, as apportioned by the Tribunal.

(iii) The Insurance Company is directed to deposit the entire award amount along with accrued interest and costs, less the amount deposited, if any, to the credit of M.C.O.P.No.1348 of 2007 on the file of the Motor Accident Claims Tribunal / Additional District Judge, (Fast Tract Court, No.2), Tiruchirappalli, within a period of eight weeks from the date of receipt of a copy of this judgment;

(iv) The 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; and

(v) On such payment of Additional Court fees, if any, by the claimants, the Tribunal is directed to transfer the entire award amount along with accrued interest and costs directly to the respective Personal Savings Bank Account Numbers of the Claimants, through RTGS/NEFT system, after getting their Account Details, within a period of two weeks thereafter;

16. In view of the judgment passed in C.M.A(MD)No.255 of 2013, C.M.A(MD)No.2054 of 2013 is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

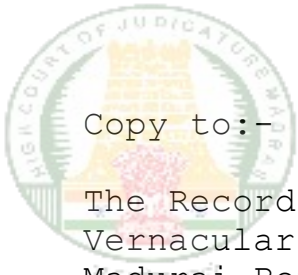
Assistant Registrar(CS-II)

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Sub Assistant Registrar

To

1. The Additional District Judge, (Fast Tract Court, No.2),
Motor Accident Claims Tribunal,
Tiruchirappalli.



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Madurai Bench of Madras High Court,
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+ 1 cc TO Mr.M.Karunanithi , Advocate in SR No. 78108

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