



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.10.2016

CORAM

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THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.(MD)No.271 of 2013
and
M.P(MD)No.2 of 2013

The Managing Director,
Tamil Nadu State Transportation Corporation
(Tirunelveli Division),
Tirunelveli.

... Appellant

Vs.

1.Balasaraswathi, W/o.S.P.Murugesan
2.Prabha, D/o.S.P.Murugesan
3.Kalaivani, D/o.S.P.Murugesan
4.Saravana Karthikeyan, S/o.S.P.Murugesan
5.Minor Iswarya, D/o.S.P.Murugesan
6.Minor Kaviya, D/o.S.P.Murugesan ... Respondents
(Respondents 5 and 6 are declared as majors
and her mother viz., the first respondent is
discharged from guardianship
vide order dated 03.10.2016)

Prayer:- Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Order and decreetal order dated 21.11.2011 passed in M.C.O.P.No.389 of 2011 on the file of the Motor Accidents Claims Tribunal, Fast Track Court No.2, Tirunelveli.

For Appellant ... Mr.P.Prabhakaran
For Respondents ... Mr.S.Meenakshi Sundaram

* * * * *

JUDGMENT

(Judgment of the Court was made by V.M.VELUMANI, J.)

This Civil Miscellaneous Appeal has been filed against the judgment and decree dated 21.11.2011 passed in M.C.O.P.No.389 of 2011 on the file of the Motor Accidents Claims Tribunal, Fast Track Court No.2, Tirunelveli.



2. The facts in brief leading to the filing of this Civil Miscellaneous Appeal, are as follows:

(i) The appellant is the respondent and the respondents are the claimants in M.C.O.P.No.389 of 2011 on the file of the Court of Motor Accident Claims Tribunal (Fast Track Court No.II), Tirunelveli. The respondents filed a claim petition in M.C.O.P.No.389 of 2011 against the appellant claiming a sum of Rs.1,00,00,000/- as compensation.

(ii) According to the respondents/claimants, on 29.10.2010 at 12.30 hours, one S.P.Murugesan, husband of the first respondent, father of the respondents 2 to 6, was riding his Super Splendor Motorcycle bearing Registration No.TN-72-AF-2526 on Ittamozhi Road, near Siva Subramanian Street. At that time, a bus bearing Registration No.TN-57-N-1226 belonging to the appellant driven by its driver in a rash and negligent manner, dashed against the said Murugesan. Due to the impact, he died on the spot. A complaint was given against the driver of the bus before the Tisyanvilai Police Station and a case was registered in Crime No.294/2010 under Section 304(A) I.P.C. At the time of accident, the deceased was 52 years old and was running Cable T.V. at Tisyanvilai in the name and style of 'M/s.V.R.Cables' and was earning a sum of Rs.50,000/- per month from the Cable T.V. business and also another sum of Rs.50,000/- per month deriving from agriculture. The deceased was an Income Tax Assessee. Due to sudden death of the said Murugesan, the respondents are not able to run the Cable T.V. business and continue the agricultural work. The respondents have lost their earning. Therefore, they filed a claim petition claiming a sum of Rs.2,37,10,000/- as compensation, but restricted their claim to Rs.1,00,00,000/-.

(iii) The appellant filed counter denying all the allegations. According to the appellant, the driver of the bus belonging to the appellant was driving the bus slowly and cautiously by observing all the traffic rules and regulations. At that time, the deceased was driving his motorcycle on the right side of the said bus. When he attempted to overtake the bus, another bus was coming from the opposite side. At that time, the handle bar of the deceased motorcycle grazed on the right side body of the appellant bus, near the diesel tank and as a result, the deceased fell down from the motorcycle and sustained injuries and died. The accident took place only due to rash and negligent driving of the deceased and the driver of the bus is not responsible for the accident and therefore, the appellant is not liable to pay any compensation. At the time of accident, the deceased was not having a valid driving licence. The owner and insurer of the motorcycle are necessary parties. The claim petition is liable to be dismissed on the ground of non-joinder of necessary parties. In any event, the amount claimed is excessive.

<https://hcservices.ecourts.gov.in/hcservices> Based on the pleadings, the Tribunal framed necessary points for consideration.



(v) Before the Tribunal, on behalf of the respondents/claimants, the first respondent herself examined as P.W.1 and one Muthu Kutty, eyewitness was examined as P.W.2 and marked five documents as Exs.P.1 to P5. On behalf of the appellant, the driver of the bus was examined as R.W.1 and the appellant did not mark any document.

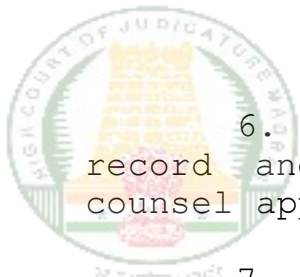
(vi) The Tribunal considering all the materials available on record, came to the conclusion that the accident took place only due to the rash and negligent driving by the driver of the bus belonging to the appellant and on consideration of oral and documentary evidence, awarded a sum of Rs.27,00,000/- as compensation with interest at the rate of 8% p.a., from the date of claim petition till realization under the following heads.

Sl.No	Heads	Amount
1	Loss of Income	26,40,000
2	Funeral expenses	10,000
3	Loss of consortium and loss of love and affection	50,000
	Total	27,00,000

3. Aggrieved by the said award, the appellant Transport Corporation has come out with the present appeal.

4. The learned counsel for the appellant has contended that the accident did not take place due to rash and negligent driving by the driver of the bus belonging to the appellant. The accident took place only due to negligence of the deceased. The Tribunal erred in fixing the income of the deceased for awarding compensation at Rs.30,000/- per month without there being any acceptable evidence produced by the respondents. The Tribunal erred in taking into consideration the gross income of the deceased mentioned in the Income Tax Returns. The compensation and rate of interest awarded by the Tribunal is excessive.

5. Per contra, the learned counsel for the respondents contended that the accident took place only due to rash and negligent driving by the driver of the appellant Transport Corporation. P.W.2, the eyewitness to the occurrence, has deposed that the accident took place due to rash and negligent driving of the driver of the appellant Transport Corporation bus. In Ex.P.1 - First Information Report, it has been stated that the accident took place only due to rash and negligent driving of the driver of the bus belonging to the appellant Transport Corporation. Therefore, the Tribunal considering the evidence of the first respondent, P.W.2 - Eyewitness and Ex.P.1 - F.I.R., came to the conclusion that the accident took place only due to rash and negligent driving of the driver of the bus belonging to the appellant Transport Corporation.



6. We have carefully perused all the materials available on record and considered the arguments advanced by the learned counsel appearing for the parties.

7. The points for consideration in this civil miscellaneous appeal are,

(i) Whether the accident took place due to rash and negligent driving by the driver of the bus belonging to the appellant Transport Corporation or due to negligence of the deceased?

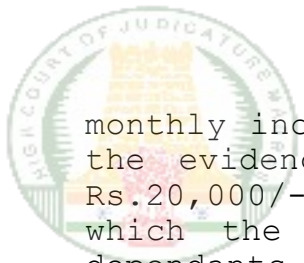
(ii) Whether the compensation and the rate of interest awarded is excessive?

Point No.(i):-

8. Before the Tribunal, the first respondent examined herself as P.W.1 and deposed as mentioned in the claim petition. She is not an eyewitness to the accident. P.W.2 is the eyewitness and he deposed that the accident took place only due to rash and negligent driving by the driver of the appellant Transport Corporation/R.W.1. The First Information Report was registered against the driver of the appellant Transport Corporation bus/R.W.1, to the effect that the accident took place only due to rash and negligent driving by the driver of the bus/R.W.1. The driver of the bus did not lodge any complaint to the effect that the accident took place only due to the negligence of the deceased. The appellant also did not examine any independent witness to substantiate their claim. P.W.2 is an independent witness. Considering the evidence of P.W.2 and the First Information Report, the Tribunal has rightly held that the accident took place only due to rash and negligent driving by the driver of the appellant Transport Corporation bus/R.W.1. The Tribunal has given cogent and valid reason for the said conclusion. Therefore, there is no reason or circumstance, warranting interference by this Court to set aside the order of the Tribunal, in this aspect. Point No.(i) is answered accordingly.

Point No.(ii)

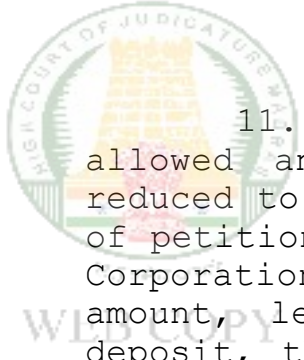
9. The respondents have claimed that the deceased was earning Rs.1,00,000/- per month by doing Cable T.V. business and by doing agricultural work. The respondents have not produced any evidence to show that the deceased was doing agricultural work or he was owning agricultural land. They have only produced Income Tax Returns showing agricultural income. Even if the deceased was owning agricultural land, the respondents can continue the agricultural activities and continue to get the agricultural income. Further, the respondents have produced Ex.P.4 - Registration Certificate for running Cable Television networks at Tisaiyanvilai from 02.02.2011 to 01.12.2012. Considering the Income Tax Returns for the year 2008-2009 and 2009-2010 and considering the fact that the respondents can carry on agricultural activities and also the facts and evidence on record, we are of the view that the Tribunal has erred in fixing the



monthly income of the deceased at Rs.30,000/- per month. Considering the evidence and documents produced by the respondents, a sum of Rs.20,000/- per month in our opinion, would be a reasonable amount, which the deceased would have earned per month. There are six dependants in this case. The Tribunal has deducted 1/3rd income for his personal expenses. Considering the fact that there are six dependants, 1/4th has to be deducted as per the various judgments of the Hon'ble Apex Court as well as this Court. The age of the deceased is 52 years and the multiplier applicable is '11'. After deducting 1/4th from Rs.20,000/-, Rs.15,000/- is fixed as monthly income of the deceased. After applying multiplier 11, the respondents are entitled to a sum of Rs.19,80,000/- [Rs.15,000/- x 12 x 11] towards loss of income. The Tribunal granted a total sum of Rs.50,000/- towards loss of consortium and loss of love and affection to the first respondent and the respondents respectively. Taking into consideration the age of the first respondent, a sum of Rs.25,000 is granted towards loss of consortium. A total sum of Rs.50,000/- is granted to the respondents 2 to 6 towards loss of love and affection. The amount awarded under the head funeral expenses at Rs.10,000/- is confirmed. The Tribunal awarded the interest at the rate of 8% p.a. It is excessive and the same is reduced to 7.5% p.a.

10. This Court on reappraisal of the materials in the form of oral and documentary evidence, is inclined to award the following amounts as compensation.

Sl. No.	Heads	Amount awarded by the Tribunal	Amount Awarded by this Court	Award confirmed/ reduced/ granted/ modified
1	Loss of Income	26,40,000	19,80,000	Reduced by Rs.6,60,000/-
2	Loss of consortium and Loss of love affection	50,000	<u>(i) Loss of consortium to wife- first respondent</u> Rs.25,000 <u>(ii) Loss of love and affection to the respondents 2 to 6</u> Rs.50,000	Modified
3	Funeral expenses	10,000	10,000	Confirmed
	Total	27,00,000	20,65,000	Reduced by Rs.6,35,000/-



11. In the result, the Civil Miscellaneous Appeal is partly allowed and the award and decree insofar as compensation is reduced to Rs.20,65,000/- with interest at 7.5% p.a. from the date of petition till the date of realisation. The appellant/Transport Corporation is granted six weeks time to deposit the compensation amount, less the amount already deposited if any and on such deposit, the respondents/claimants are entitled to withdraw their share of compensation as per the apportionment determined by the Tribunal, less the amount if any, already withdrawn. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar

smn2

To

The Additional District Judge,
The Court of Motor Accidents Claims Tribunal,
Fast Track Court No.2, Tirunelveli.

Copy TO : The Section Officer, V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

+1CC to Mr.S.Meenakshi Sundaram, Advocate Sr.No.58159
+1CC to Mr.P.prabhakaran, Advocate Sr.No.58045

GJM/CM/MSA/1.3.17-6p-5C

C.M.A. (MD) No.271 of 2013
and
M.P (MD) No.2 of 2013
03.10.2016