



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.11.2017

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THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A(MD)No.1535 of 2011

and

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

The Managing Manager
Tamilnadu State Transport Corporation,
By Pass Road, Madurai.

...Appellant/1st Respondent

Vs.

1.Usharani

2.Minor Velan

(Minor respondent rep. through his
guardian/Mother 1st res. herein) ...Respondents 1 and 2/Petitioners

3.Seethalakshmi

...3rd Respondent/2nd Respondent

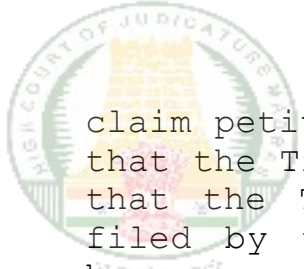
PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the Judgment and Decree passed in M.C.O.P.No.133 of 2007, dated 26th day of March, 2010 on the file of Motor Accident Claims Tribunal cum Subordinate Court, Paramakudi.

For Appellant	:Mr.M.Prakash
For R1 and R2	:Mr.D.Senthil
For R3	:Mr.S.Gopinath

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/transport corporation to set aside the Judgment and Decree passed in M.C.O.P.No.133 of 2007, dated 26.03.2010, on the file of the Motor Accident Claims Tribunal cum Sub-Court, Paramakudi, whereby the court has awarded a sum of Rs.4,02,000/- as compensation with 7.5% interest and costs.

2.The appellant/transport corporation raised various grounds stating that the Tribunal has erred in fixing the entire negligence upon the driver of the appellant/ transport corporation and that the Tribunal ought to have fixed the entire negligence or at least composite negligence upon the deceased, who drove the van in a rash and negligent manner, due to which, the accident has occurred. It is submitted that the Tribunal has also failed to note that a criminal case as against the driver of the bus is not concluded and that the negligence was on the part of the driver and the



claim petition is bad for the non-joinder of necessary parties and that the Tribunal has erred in accepting the evidence of P.W.2 and that the Tribunal ought to have accepted the counter statement filed by the transport corporation and the evidence of R2 and hence, prayed for allowing the appeal.

3. The case of the claimants is as follows:-

(i) At the time of accident, the deceased Raghukumar was 33 years old. On 08.04.2007 at around 12.30 a.m in the early morning, the said Raghukumar had driven the van on the left side of the road in Madurai to Rameshwaram highway road by following the road rules. When they were coming near to Silaiman Arun Vulcanizing shop towards west, a bus bearing Registration No.TN 58 N 0481, belongs to Tamil Nadu State Transport Corporation driven by the driver of the bus with high speed, came in rash and negligent manner without following proper procedure of dimming light, and dashed against the van, due to the same the van got damaged, and the driver Raghukumar and one Shanmugam, who was in the back side of the vehicle also died on the spot. The police lodged a complaint against the bus driver for the offence punishable under Section 304(A) of IPC., in Crime No.132 of 2007 and laid of charge-sheet.

(ii) The said deceased Raghukumar was running a flour mill in Nethaji Road and he used to earn a sum of Rs.5,000/- per month from the said flour mill. The deceased Raghukumar had purchased a mini van and he was the owner cum driver of the van and from that vehicle, he earned a sum of Rs.10,000/- per month and totally Rs.15,000/- was the monthly income of the said deceased Raghukumar. The claimants are not able to run the flour mill and hence, the flour mill was closed and also the van was sold for a lesser price, since it is not used. Since the first respondent being a lady and her son is only 1 ½ years old, they did not have any income on their own and they claimed a sum of Rs. 10,00,000/- as compensation.

4. Before the Tribunal, the Transport Corporation/first respondent has filed counter affidavit and stated that the claim petition is not maintainable and they also denied the occurrence of the accident in the manner as deposed by the claimants. They have also stated that the claim petition is bad for non-joinder of necessary party/insurance company of mini van. It is also stated that the claim and the amount of interest are abnormal, exorbitant and on the higher side.

5. Before the Tribunal, on the side of the claimants, two witnesses viz., P.W.1 and P.W.2 were examined and seventeen documents viz., Exs.P.1 to P.17 were marked and on the side of the respondent, two witnesses viz., R.Ws.1 and 2 were examined and no documents were marked.

<https://hccourtsonline.gov.in/sermes>

6. The Tribunal after going through the materials on record and



also evidence of the parties and the exhibits produced, had awarded a sum of Rs.4,02,000/- as compensation to the claimants and the second respondent stating that only due to the rash and negligent driving of the Government bus driver, the accident has occurred.

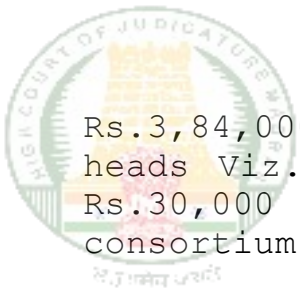
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7. Heard the learned counsel appearing for the appellant/Transport Corporation and the learned counsel's for R1 and R2/ Claimants and third respondent and perused the materials on record.

8. It is seen from the evidence that the deceased person has owned a mini van and was running the vehicle for hire from Paramakudi to Madurai fish market along with two persons namely Shamugam and Murugesan. At around 12.30 a.m on 08.04.2007, when they were reaching near Silaiman Arun Vulcanizing shop, the bus belonging to the appellant/transport corporation came in a rash and negligent manner and dashed against the mini van, due to which, the accident has occurred. It is evident from the statement of P.W.2., that the accident has occurred only due to the rash and negligent driving of the bus driver. The said statement was one and the same, as seen in the FIR and the Motor Vehicle Inspector's report and the reported evidence and the charge sheet filed against the driver of the Government bus.

9. Since no evidence was produced by the appellant/Transport corporation, except the evidence of the driver of the State transport corporation bus, this Court is of the opinion that the appellant/transport corporation has failed to prove that the negligence was only on the part of the van driver and not on the part of the driver of the bus. This Court finds that there is no illegality or infirmity in the order passed by the Tribunal, regarding the liability of the driver of the transport corporation.

10. The ITI Certificate, service and apprenticeship certificate, co-operative Diploma Certificate, sports certificates and other certificates produced by the claimants would prove that the deceased was very young and educated and capable of doing some work. Since there was no proper evidence produced by the claimants regarding earning capacity of the deceased, the Tribunal has rightly taken a sum of Rs.3,000/- per month as income of the deceased and after deducting 1/3rd for his personal expenses a sum of Rs.2,000/- has been taken as loss of monthly income for the family and arrived at a sum of Rs.24,000/- (Rs.2000x12) as loss of yearly income to the family. At the time of the accident, the age of the deceased is 33. But the Tribunal has wrongly taken the multiplier 14 taking into account the age of the deceased as 55. Therefore, the same has to be set aside. Since the correct multiplier would be 16 as per the *Sarla varma's* case, the loss of income to the family would be Rs.24,000 X 16=



Rs.3,84,000. This Court feels that the amount awarded under other heads Viz., Transport Expenses Rs.3,000/- and love and affection Rs.30,000 and Loss of future prospects Rs.15,000 and Loss of consortium Rs.15,000 and Funeral Expenses Rs.3,000 are very low.

11.The learned counsel for the claimants would submit that the claimants are very poor family and they were not in a position to pay the court fee, that is the reason, why they have not filed any cross objection till date and would plead for some mercy to be shown on the claimants by relying on the judgment of this Court reported in 2015 (1) TN MAC 354 (DB) *Oriental Insurance Co.Ltd., Vs. Sellammal and others*, wherein the Hon'ble Court has stated that as per Order 41 Rule 33 of C.P.C., enhancement of compensation in the appeal filed by insurer without their being cross objection by the claimants is permissible and the appellate court may grant relief to the person, who neither appealed not filed cross objection.

12.In the result, this Civil Miscellaneous Appeal is dismissed. However, the award made in M.C.O.P.No.133 of 2007, dated 26.03.2010 on the file of the Motor Accident Claims Tribunal cum Sub Court, Paramakudi is hereby enhanced as follows:-

Sl.No	Heads	Amount in Rupees
1.	Loss of income	Rs.3,84,000/-
2.	Transport Expenses	Rs. 3,000/-
3.	Loss of Love and affection	Rs. 50,000/-
4.	Future prospects	Rs. 25,000/-
5.	Loss of Consortium	Rs. 50,000/-
6.	Funeral Expenses	Rs. 10,000/-
	Total	Rs.5,22,000/-

13.The learned counsel for the appellant/Transport Corporation vehemently opposed the enhancement of award amount in the appeal filed by the appellant/Transport Corporation, without filling any cross objection.

14.In view of the above submission, the amount, which has been awarded as enhanced amount namely, Rs.1,20,000/-, should be deposited in a fixed deposit in the name of the minor child in any nationalized bank till he attains the age of majority and his mother is permitted to withdraw the interest, once in three months, for the welfare of the minor.

15.In respect of the remaining amount of Rs.4,02,000/- (amount awarded by the Tribunal), the appellant/Transport Corporation is



directed to deposit the said award amount with accrued interests and costs, within a period of eight weeks from the date of receipt of a copy of this order, less the amount already deposited if any, and on such deposit being made, the first respondent/wife and third respondent/mother of the deceased are entitled to withdraw their respective shares along with proportionate accrued interest and costs as apportioned by the Tribunal, after filing formal petition before the Tribunal and the share of the minor second respondent along with proportionate accrued interest and costs shall be deposited in any one of the nationalized bank, in a Fixed Deposit, initially for a period of three years, and renewable thereafter, till he attains majority and his mother is permitted to withdraw the interest once in three months. No costs. Consequently, M.P.(MD).No.2 of 2011 is closed.

Sd/

Assistant Registrar(CS-III)

/True copy/

Sub Assistant Registrar

To:

1.The Subordinate Judge,
The Motor Accident Claims Tribunal,
(Sub-Court),
Paramakudi.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.(2 Copies)

+1cc to Mr.D.SENTHIL, Advocate, SR.No.84952

+1cc to Mr.M.PRAKASH, Advocate, SR.No.85091

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and
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