



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.11.2017

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THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A(MD)Nos.875 of 2013 and 75 of 2014andM.P.(MD) No.1 of 20131.CMA(MD)No.875 of 2013:-

Tamil Nadu State Express Transport
Corporation Limited,
through its Managing Director,
Pallavan Salai,
Chennai-600 002.

... Appellant/ Respondent

/Vs./

1.Rajendran
2.Shenbagaraj
3.Vinoth

... Respondents/Petitioners

Prayer: Civil Miscellaneous Appeal is filed under section 173 of the Motor Vehicles Act 1988, against the judgment and decree, dated 30.04.2012 passed in M.C.O.P No.1383 of 2011 on the file of the Motor Accident Claims Tribunal/ 3rd Additional District Court, Tirunelveli.

For Appellant : Mr.P.Prabhakaran

For Respondents : Mr.T.Selvakumaran

2.CMA(MD)No.75 of 2014:-

1.Rajendran
2.Shenbagaraj
3.Vinoth

... Appellants /Petitioners

/Vs./

Tamil Nadu State Transport Corporation Ltd.,
Through its Managing Director,
Pallavan Salai,
Chennai.

: Respondent / Respondent

Prayer:- Civil Miscellaneous Appeal is filed under section 173 of the Motor Vehicles Act 1988 against the judgment and decree made in M.C.O.P. No.1383 of 2011 on the file of the Motor Accident Claims



Tribunal / 3rd Additional District Sessions Judge, Tirunelveli, dated 30.04.2012.

For Appellant : Mr.T.Selvakumaran

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For Respondents : Mr.P.Prabhakaran

COMMON JUDGMENT

(Judgment of this court was made by K.KALYANASUNDARAM, J.)

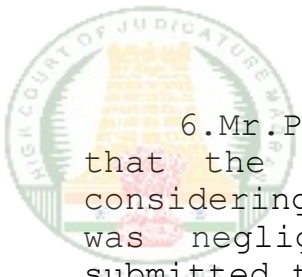
CMA(MD)No.875 of 2013 has been preferred by the Transport Corporation challenging the award of the Motor Accident Claims Tribunal (3rd Additional District Court), Tirunelveli, made in MCOP No.1383 of 2011, dated 30.04.2012, whereas CMA(MD)No.75 of 2014 is filed by the claimants seeking enhancement of compensation.

2.MCOP No.1383 of 2011 was filed by the husband and the children of the deceased Lakshmi, who died in a motor vehicle accident, on 15.11.2011. According to the claimants, when the deceased was proceeding in a TVS XL Super bearing registration No.TN-69-W-8637 from Keela Eral to Mela Eral on Tuticorin-Madurai main road from south to north direction, a bus TN-01-N-9529 belonging to the Transport Corporation came from opposite direction in a high speed and dashed against the Motorcycle and ran over the deceased. In the accident, the deceased died on the spot. A case in Crime No.204 of 2011 was registered by the Eddayapuram Police station under section 304(A) IPC..

3.The claimants have further stated that the deceased was working as Secondary Grade Teacher in V.A.M.R. Hindu Nadar Middle School at Keela Eral and was earning Rs.33,369/- per month and she died at the age of 52 years. They claimed compensation of Rs.40 Lakhs alleging that the accident had taken place due to the negligence of the driver of the bus.

4.The claim was resisted by the appellant, by filing counter affidavit, contending that the bus driver was driving the bus slowly and cautiously, but, the deceased had suddenly entered from a lane (Kutch Path) and invited the accident. Since the deceased was responsible for the accident, the Transport Corporation is not liable to pay any amount to the claimants.

5.Both the parties have adduced oral and documentary evidence. The tribunal, after analyzing the evidence, came to the conclusion that the driver of the bus was responsible for the accident and awarded compensation of Rs.15,40,000/- together with interest @ 8%



6.Mr.P.Prabhakaran, learned counsel for the appellant submitted that the deceased was negligent, however, the tribunal without considering the material evidence held that the driver of the bus was negligent and therefore, it is to be set aside. It is further submitted that the award is on the higher side.

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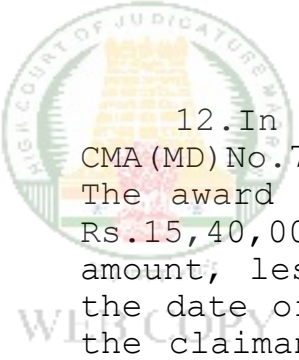
7.On the other hand, Mr.T.Selvakumaran contended that split multiplier ought to have applied in this case, by placing reliance upon the decision of the Hon'ble Apex Court in Puttamma and others Vs. K.L.Narayana Reddy (2014 ACJ 526) and prayed for enhancement of compensation.

8.We have heard the rival submissions made on either side and perused the materials available on record.

9.As regards negligence, PW2, Ramachandran deposed that he has witnessed the accident and the driver of the bus came rashly and negligently and hit against the deceased. Ex.P1 First Information Report shows that a criminal was registered against the driver of the bus. The appellant examined one Stalin as RW2. The tribunal, after considering the evidence of PW2 and RW1, rightly came to the conclusion that the driver of the bus was responsible for the accident.

10.It is not in dispute that the deceased was working as a Teacher and he died at the age of 52 years. Ex.P4 salary certificate of the deceased shows that the deceased was paid Rs.33,369/- per month. PW1, husband of the deceased has reiterated the statement made in the claim petition. The tribunal, on the basis of the evidence, fixed the income of the deceased at Rs.30,000/- per month. In the case of Puttamma, the Hon'ble Apex Court observed that the reasons have to be assigned for applying the theory of split multiplier. Admittedly, the deceased was having 2 years and 3 months service before her retirement and after retirement, the income of the deceased would not be the same. Therefore, the tribunal has applied split multiplier. The tribunal, by adopting multiplier '8' awarded Rs.15,00,000/- (Rs.5,40,000/- + Rs.9,60,000/-) towards loss of income; Rs.10,000/- towards funeral expenses and Rs.30,000/- towards love and affection. In total, the tribunal has awarded Rs.15,40,000/- together with interest @ 8% p.a.

11.The income of the deceased was proved through the evidences PW1 and Ex.P4 salary certificate. The tribunal, while calculating the loss of dependency, awarded Rs.5,40,000/- for the left over service and by applying multiplier '8' for the remaining period, awarded Rs.9,60,000/-. As per the decision in Sarla Verma, multiplier '7' ought to have been applied for the remaining period, so this court awards Rs.8,40,000/- (Rs.10,000/- x 12 x 7) and the total loss of income is arrived at Rs.13,80,000/- (Rs.5,40,000/- + Rs.8,40,000/-). The award on the other heads are confirmed. The interest awarded by the tribunal is modified to 7.5% per annum. In total, the claimants would be entitled to Rs.14,20,000/- together with interest @ 7.5% p.a.



12. In the result, CMA(MD)No.875 of 2013 is partly allowed and CMA(MD)No.75 of 2014 filed seeking for enhancement is dismissed. The award of the tribunal is reduced to Rs.14,20,000/- as against Rs.15,40,000/-. The appellant is directed to deposit the modified amount, less already deposited, within a period of eight weeks from the date of receipt of a copy of this judgment. On such compliance, the claimants are permitted to withdraw their share as apportioned by the tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CSIII)

/True Copy/

Sub-Assistant Registrar

To,

1. The Motor Accident Claims Tribunal/
3rd Additional District Court,
Tirunelveli.

2. The Record Keeper, (2copies)
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+One cc to Mr.P.Prabhakaran, Advocate, SR.No.85064

+One cc to Mr.T.Selvakumaran, Advocate, SR.No.85133

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RL/6C/4P/KK/SAR1/26/2/2018

C.M.A(MD)Nos.875 of 2013 and 75 of 2014
and
M.P.(MD) No.1 of 2013

03.11.2017