

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.1094 of 2018  
and C.M.P.No.9163 of 2018

The Managing Director,  
Tamil Nadu State Transport Corporation,  
Kumbakonam Limited,  
New Railway Station Street,  
Kumbakonam Town and Taluk,  
Thanjavur District. ...Appellant/Respondent

Vs.

1.V.Jeyapaul,  
2. J.Indhira  
3. Minor Yogeswaran,  
rep. by his father and Next  
frined V.Jeyapaul. ...Respondents/Petitioner

Civil Miscellaneous Appeal filed under Section 173 of the  
Motor Vehicles Act against the judgment and decree dated  
10.08.2017 made in MCOP.No.238 of 2015 on the file of the Motor  
Accident Claims Tribunal at, Mannarkudi.

For appellant : : Mr.D.Venkatachalam  
for Respondents : : Mr.SP. Yuvaraj

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the  
appellant/Transport Corporation, challenging the judgment and  
decree dated 10.08.2017 made in MCOP.No.238 of 2015 on the file  
of the Motor Accident Claims Tribunal at, Mannarkudi.

2. For the sake of convenience, the parties are referred to  
as per their litigative status before the Tribunal. It is a  
fatal case. The case of the Petitioners is that on 16.10.2015  
while the deceased J.Dhayanidhi was returning home from  
Mannargudi in the respondent bus bearing Reg.No.TN-49-N-1358,  
the driver of the bus drove the vehicle at high speed and in a  
rash and negligent manner and while going near Neipalathottam  
bus stop, as the driver suddenly applied brake, the deceased was  
thrown out of the bus and run over by the back side wheel of the  
bus, causing him fatal injuries, resulting in his death

subsequently in the hospital. The accident occurred only due to negligence of the 1<sup>st</sup> respondent vehicle driver. The deceased was aged 19 years and he was studying 1<sup>st</sup> year BE course. The Petitioners who are the parents and younger brother of the deceased have come forward with the claim Petition seeking a sum of Rs.30,00,000/- as compensation from the respondent-Transport Corporation.

3. On the other hand, disputing the claim of the Petitioner, by filing counter, the respondent corporation contends that the accident did not occur in the manner alleged by the Petitioners.

While the respondent bus bearing Reg.No.TN-49-N-1358 was proceeding at normal speed in Mannargudi to Pudukudi Road, on 16.10.2015, the conductor gave signal to stop the bus at Neipalathottam. Even before the bus came to a halt, the deceased tried to get down from the rear side entrance and in the process fell down, suffered injuries inspite of warning given by the driver of the bus not to get down from the moving bus. The Petitioner travelled by standing in the footboard and the same resulted in the accident. The age of the deceased and the other particulars of the deceased are disputed. The amount claimed is excessive and thus sought for dismissal of the claim petition.

4. Before the Tribunal, the Petitioners examined P.W.1 and P.W.2 and produced documents Ex.P.1 to Ex.P.13 to prove their claim. On the other hand, the respondent did not let in any oral or documentary evidence. The Tribunal, on careful consideration of the available material on record found negligence of the 1<sup>st</sup> respondent bus driver alone caused the accident, passed award for a sum of Rs.14,71,000/- payable by the respondent to the Petitioners.

5. Being aggrieved over the said finding of the tribunal, the respondent-Transport corporation has come forward with the present appeal.

6. The learned counsel for the respondent-Transport corporation/appellant herein contends that even though no documentary proof with regard to age, income was produced, the Tribunal wrongly fixed the notional income at Rs.8,000/- which is not proper. The Tribunal added 50% of his income towards future prospects while only 40% has to be added. The Tribunal awarded much higher amount towards loss of love and affection which is not permissible. The award passed by the Tribunal is highly excessive and the same is liable to be set aside. Thus, the respondent-Transport Corporation sought to entertain the appeal.

7. Per contra, the learned counsel for the Petitioners/claimants contended that the deceased was a bright student and due to his sudden demise, the Petitioners have lost their son resulting in mental agony to them. The Tribunal awarded just and fair compensation, which needs no interference.

Thus the Petitioners/claimants sought for dismissal of the appeal.

8. It is only quantum appeal. Neither side has raised any arguments regarding the conclusion arrived at by the Tribunal fixing negligence on the Respondent-Transport Corporation bus driver as the cause for the accident. The eyewitness to the occurrence who deposed as P.W.2 categorically stated about the manner in which the accident occurred. The Police also registered a case against the respondent bus driver and the same is evidenced by Ex.P.1 FIR. There is no contra evidence let in by the respondent-Transport Corporation to disprove the version given by the Petitioners/claimants. The driver of the respondent bus was not examined. As such, the Tribunal in the absence of any contra evidence, after considering the evidence of P.W.2 eye witness and the contents of Ex.P.1-FIR held that the negligence of the Respondent bus driver alone caused the accident and the same needs no interference as it is well founded conclusion.

9.1. Admittedly, the deceased was a first year B.E., student. The Identity card of the deceased is produced as Ex.P.6. While 10<sup>th</sup> standard and 12<sup>th</sup> standard mark sheet were produced as EX.10 and Ex.P.12. It is clear from the same that Date of Birth of the deceased was 04.10.1997. As such on the date of the accident, i.e., 16.10.2015 it is clear that the deceased was aged 19 years. It is pointed out that the deceased was a bright and good student. It is clear from Ex.P.11-Conduct certificate that the deceased was a disciplined student. The Tribunal has fixed notional income at Rs.8000/- per month. Considering the fact that the deceased was a bright student in B.E.course, it is just and fair to fix the notional income at Rs.8,000/- per month. As the deceased was a bachelor, towards personal expenses 50% of the amount has to be deducted. Considering the age of the deceased, 40% of the income should be added towards future prospects. The correct multiplier to be applied is '14'. The calculation towards loss of dependency to the family of the deceased Dhayanidhi is as follows:-

Monthly salary - Rs.8,000/-

40% towards future prospects  $8000 + 40\% (3200) = 11,200/-$

$11,200 - 50\% (5600)$  deduction towards personal expenses.

$11,200 - 5600 = 5600$

$5600 \times 12 \times 18 = 12,09,600/-$

Following the Apex court decision reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and Others], the compensation towards conventional heads, is as



under:-

Funeral expenses -15,000/-  
Loss of estate -15,000/-

9.2. The Tribunal has awarded Rs.50,000/- each to the 1<sup>st</sup> and 2<sup>nd</sup> petitioners for loss of love and affection. Pointing it out, the learned counsel for the respondent-Transport corporation contended that following the Pranay sethi case, the Petitioners are not entitled for any amount towards loss of love and affection.

10. On the other hand, the learned counsel for the Petitioners contended that in any event, the Parents of the deceased are entitled to compensation for the loss of love and affection of their son. He relied on the decision of Kerala High Court reported in 2017 SCC Ker 23174 [1.Valsamma and othrs Vs. V.A.Baiju, 2.Rev.F.R.Joseph Vattakalam, and 3. The National Insurance Co.Ltd.,] and the Ruling of this Court reported in 2018(1) TN MAC 289 [Branch Office, New India Assurance Co.Ltd., Vs. Meenkashi and others]. Considering the same, it will be appropriate to provide for Rs.20,000/- each to the 1<sup>st</sup> and 2<sup>nd</sup> petitioners towards loss of love and affection, instead of Rs.50,000/- each provided by the Tribunal. However the 3<sup>rd</sup> petitioner is not entitled for any amount towards loss of love and affection. Towards transport expenses, the Tribunal granted 10,000/- and the same is enhanced to Rs.15,000/-.

| Sl.No | Heads                                                                         | Amount awarded by the Tribunal (Rs.) | Amount awarded by this court (Rs.) |
|-------|-------------------------------------------------------------------------------|--------------------------------------|------------------------------------|
| 1.    | Loss of dependency                                                            | 12,96,000                            | 12,09,600                          |
| 2.    | Loss of love and affection to 1 <sup>st</sup> and 2 <sup>nd</sup> petitioners | 1,00,000                             | 40,000                             |
| 3.    | Transport expenses                                                            | 10,000                               | 15,000                             |
| 4.    | Funeral expenses                                                              | 15,000                               | 15,000                             |
| 5.    | Loss of estate                                                                | --                                   | 15,000                             |
| 6.    | Loss of love and affection to 3 <sup>rd</sup> petitioner                      | 40,000                               | ---                                |
|       | Total                                                                         | 14,71,000                            | 12,94,600                          |

11. In the result,

- This Civil Miscellaneous Appeal is Partly Allowed;
- The award amount is reduced to Rs.12,94,600/- from 14,71,000/-
- The award amount will carry interest at the rate of 7.5% from the date of petition till the date of realisation;
- The appellant/Transport Corporation is directed to deposit the entire award amount along with proportionate interest and

cost, as ordered by this court, less the amount, if any already deposited.

(v) The Petitioners 1 to 3/respondents 1 to 3 are entitled to the award amount on the following apportionment:- 1<sup>st</sup> and 2<sup>nd</sup> petitioners-40% each

3<sup>rd</sup> petitioner 20% . The Petitioners 1 and 2 are entitled to withdraw their respective shares of the award amount along with accrued interest, less the amount already withdrawn. Insofar as 3<sup>rd</sup> respondent/3<sup>rd</sup> Petitioner/Minor share is concerned, the same shall be invested in a fixed deposit in Nationalised Bank and the same shall be renewed periodically, until the 3<sup>rd</sup> respondent attains majority and the interest accrued therein shall be withdrawn by the 1<sup>st</sup> respondent, once in three months. The Tribunal shall pass necessary orders for disbursal of the award amount by following the appropriate procedure.

(vi) No costs. Consequently, connected MP is closed.

Sd/-  
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

nvsri

TO

The Motor Accident Claims Tribunal, Mannargudi.

Copy to: The Section Officer,  
VR Section, High Court, Madras.

+ 1 cc to MR. D. Venkatachalam, Advocate Sr.36713

+ 1 cc to MR. S.P. Yuvaraj, Advocate Sr.36073

C.M.A.No.1094 of 2018

RJ(CO)  
EU(24/07/2018)