

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.10.2018

CORAM

THE HONOURABLE Mrs.JUSTICE S.RAMATHILAGAM

CMA.No.2711 of 2006

and

CMP.No.9751 of 2006

The Managing Director,
Tamilnadu State Transport Corporation
(Kumbakonam-Division I) Ltd.,
(Formerly Cholan Transport corporation Ltd.,)

....Appellant/Respondent

- 1.Chidambaram
- 2.Neelavathi
- 3.Rajamani Ammal
- 4.Ramesh
- 5.Thangadorai
- 6.Kumar
- 7.Kanagayal (Minor)
- 8.Thangam (Minor)
- 9.Manimegalai (Minor), Minors rep.by their mother &
Next friend Rajamani Ammal.Respondents/Petitioners

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the judgment and decree made in MACT.O.P.No.627 of 1995 on the file of the Motor Accidents Claims Tribunal (Principal Subordinate Judge) at Cuddalore dated 19.10.2000.

For Appellant : Mr.M.Krishnamoorthy
For Respondents: Mr.R.Muralidaran for
RR2 to 9
1st respondent : Unserved

J U D G M E N T

The civil miscellaneous appeal has been preferred against the judgment and decree passed in MACT.O.P.No.627 of 1995 dated 19.10.2000, on the file of the Motor Accidents Claims Tribunal (Principal Subordinate Judge) at Cuddalore.

2.The brief facts leading to the claim application are as follows:-

On 06.02.1995, at about 9.25 pm, the deceased was returning home from Vadalur and at that time, the bus belong to the respondent, driven by its driver in a rash and negligent manner

by over taking a lorry and knocked the deceased, as a result, he died on the spot. The claimants who are the legal heirs of the deceased Sabhapathi claimed a sum of Rs.3,50,000/- as compensation.

3.The respondent in the counter statement has denied the mode of accident and stated that on 06.02.1995, the driver of the bus bearing Registration No.TN49N0511, who was driving the vehicle to Vadalur developed chest pain, when the bus was nearing Karunkuzhi which is almost 3 kilometres before reaching Vadalur and he was taken to the Hospital for treatment at Vadalur. In the meanwhile, the passengers were transferred to another vehicle

belonging to Pattukottai Alagiri Transport Corporation and the vehicle was parked at Vadalur itself and the said bus was taken only on the next day. Hence, the informations recorded in the FIR are not true. The other aspects regarding the claim made by the claimants and the details stated by the claimants regarding the age, employment and income of the deceased are also denied. Hence the respondent sought for dismissal of the claim application as the claim is excessive and disproportionate and not liable to pay the same.

4.The Tribunal after analyzing the evidence and documents placed before the same has given a finding that the accident occurred only due to rash and negligent driving on the part of the respondent driver and awarded a sum of Rs.2,25,000/- as compensation are as follows:-

"the income was fixed at Rs.75/- per day and his monthly income (for 25 days) comes to Rs.75/- x25=Rs.1,875/-, and the annual income comes to 1875x12=22,500/-. In which 1/3rd amount will be deducted for his personal expenses which comes to Rs.22,500/3 7500 (22,500 - 7,500 = 15000). Since his age was about 40 years at the time of accident, hence, multiplier method 15 was adopted, the amount comes to Rs.15,000/- X15 = Rs.2,25,000/-."

5.Aggrieved against the said award, the claimants have preferred this appeal.

6.In the grounds of appeal, the appellant has stated that the said vehicle was not involved in the accident and the said bus was wrongly implicated in the said accident with ulterior motive. The evidence of the appellant before the Tribunal was that the driver of the said bus suffered from severe chest pain during trip and taken to the hospital without completing. Hence, the claimants case regarding the involvement of the appellant's bus in the accident is false. The other grounds raised by the appellant is that the sum awarded by the Tribunal

at Rs.2,25,000/- is highly excessive, when the age, income and avocation of the deceased was not proved by the claimants with necessary documentary evidence. The interest awarded is also on the higher side. Hence, the appellant sought for dismissal of the awards.

7.It is argued by the appellant that the appellant Corporation bus was not involved in the said accident as stated in the claim application. On perusal of the records, it is seen that P.W.1 who is the wife of the deceased deposed before the Tribunal that the CRC bus came in a rash and negligent manner and dashed against her husband, who was returning from Vadalur. Ex.P1 is the FIR and P2 is the postmortem certificate filed before the Tribunal. Ex.P2 was also examined before the Tribunal, who had spoken to the effect that on 06.02.1995 at about night time when he was going to Karunkuzhi by his motorcycle and at that time, the bus bearing Registration No.TN49N0511 came in a rash and negligent manner by over taking a lorry and hit against the deceased. Further, the driver of the bus did not stop the same.

8.On the side of the respondents R.W.1 to R.W.3 were examined. R.W.2 has deposed that when he was coming from Mannarkudi to Pondicherry in the bus which has been mentioned in the claim application was stopped by the driver due to chest pain and he only took the driver to the hospital and the passengers in the said bus were also taken in another bus. R.W.3 also deposed the same. But in the cross examination, both R.W.2 and R.W.3 were not able to produce any documents to show the details of number of passengers travelled in the said bus and with regard to the illness of the driver of the said bus. But on perusal of Ex.P1, the FIR, clearly proves the fact that the accident had occurred only due to rash and negligent driving on the part of the Transport Corporation bus driver. Hence, the finding of the Tribunal in fixing negligence on the part of the driver of the Transport Corporation bus is very much appropriate, which is very much supported by the evidence on the side of the claimants.

9.The other arguments advanced by the appellant is that the Tribunal without any documentary proof has taken the age of the deceased as 40 and his monthly income at Rs.1,875/- is very much on the higher side. On the side of the respondents/claimants, it is argued that the deceased was 40 years at the time of accident and he was also working as Contractor Laborer and Mason and his monthly income was Rs.2,000/-. Hence, the Tribunal has considered the said aspects regarding the age and occupation of the deceased, has modified sum at Rs.1,875/- by calculating Rs.75/- per day and the sum was also calculated for 25 days. Hence, the sum arrived by the Tribunal as monthly income is very

much reasonable. Accordingly, the multiplier applied by the Tribunal and calculated loss of income at Rs.2,25,000/- is also very much proper and reasonable.

10.Further, it is argued by the respondents/claimants that when the deceased was 40 years at the time of accident, the claimants who are wife, children and parents of the deceased, totally nine in numbers. Whereas the Tribunal has not awarded any amount for consortium, loss of love and affection and for funeral expenses. This Court by considering the grievance of the respondents/claimants is inclined to award under the heads for consortium, loss of love and affection and funeral expensed which they are very much entitled. Accordingly, a sum of Rs.15,000/- is awarded under the head "consortium", for the 3rd respondent (Rajamani ammali) and Rs.40,000/- for the children/respondents 4 to 9 and a sum of Rs.40,000/- for respondents 1 and 2 and for funeral expenses Rs.15,000/-.

11.The sum modified by this Court under various heads as follows:-

Heads	Sum Awarded by the Tribunal	Sum Modified by this Court
Total Compensation	Rs.2,25,000/-	Rs.2,25,000/-
Loss of Consortium for R1 and R2	-	Rs.40,000/-
Loss of Consortium for R3	-	Rs.15,000/-
Loss of Consortium for R4 to R9	-	Rs.40,000/-
Funeral Expenses	-	Rs.15,000/-
Total	Rs.2,25,000/-	Rs.3,35,000/-

Out of the total award amount, R1 is entitled to Rs.35,000/-, R2 is entitled to Rs.35,000/-, R3 is entitled to Rs.1,15,000/-, R4 to R9 are entitled to Rs.25,000/- each. The amount awarded towards minor respondents shall be deposited in any one of the Nationalised Bank till they attain majority. The accrued interest on such deposit shall be withdrawn by R3/Mother of the minor children.

12.Though the Transport Corporation Company has filed the appeal to set aside the award passed by the tribunal, the facts and circumstances of this case of this case enables this Court to enhance the compensation. Accordingly, award of the Tribunal

(i.e.,) Rs.2,25,000/- is enhanced to Rs.3,35,000/- invoking Order 41 Rule 33 of CPC and Section 151 and Article 227 of Constitution of India. The provisions of the Motor Vehicles Act are beneficial in nature and what is required to be awarded is just and reasonable compensation. Therefore, even in the absence of appeal/cross-appeal by the claimant, this Court has got power and jurisdiction to enhance the compensation, which has been recognised by the Honourable Supreme Court in Nagappa V. Gurdayal Singh reported in 2004 (2) TN MAC 398 (SC).

13.The respondents/claimants are directed to pay the additional court fee within a period of one week from the date of receipt of a copy of this order.

14.In the result, the Civil Miscellaneous Appeal is disposed of enhancing the compensation from Rs.2,25,000/- to Rs.3,35,000/- suo motu in the appeal filed by the Transport Corporation even in the absence of appeal/cross-appeal by the claimant. Consequently, connected miscellaneous petition is closed. No costs.

15.Accordingly, the Appellant/Transport Corporation is directed to deposit the entire modified award amount, in respect of above Appeal as per the order of this Court, with interest and costs, before the Tribunal, after adjusting the amount, if any, already deposited, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer the same to the claimants bank account through RTGS within one week thereon. The rate of interest for the modified amount is 7.5% p.a. The apportionment will be as ordered by the Tribunal.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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AT
To

1. The Principal Sub Judge,
The Motor Accident Claims Tribunal
Cuddalore

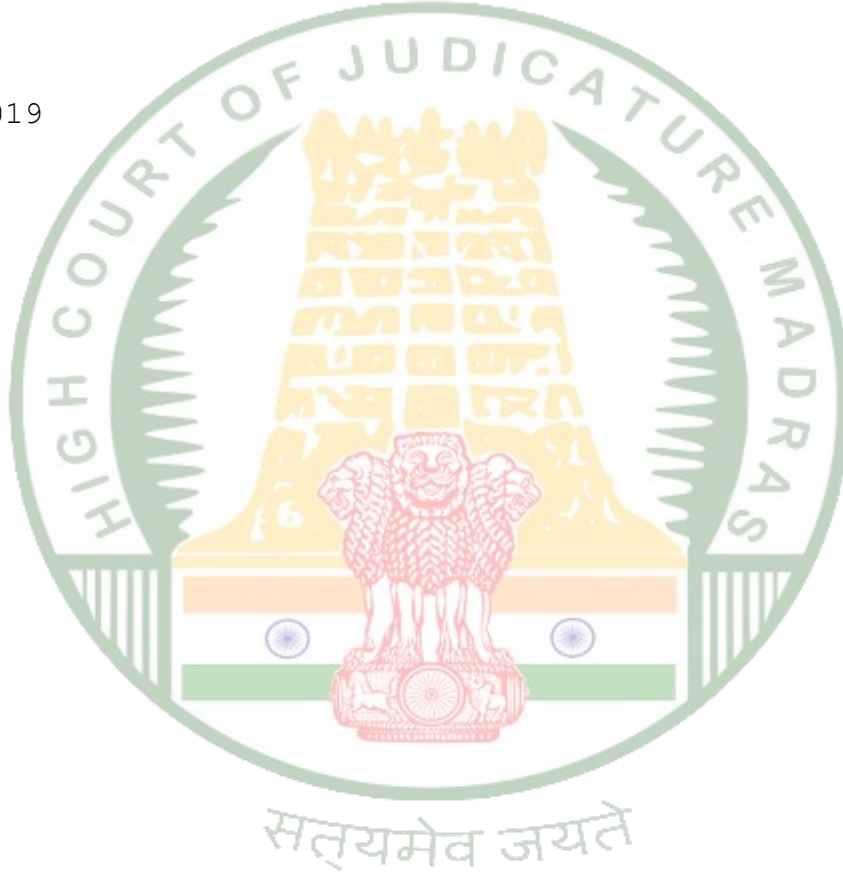
Copy to

The Section Officer,
V.R.Section,
High Court, Madras.

+1 cc to Mr.M.Krishnamoorthy Advocate sr74455
+1 cc to Mr.R.Muralidharan Advocate sr75394

CMA.No.2711 of 2006

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