IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.176 of 2016 and

1. N. Jayakowsalya Devi
2. Minor N. Sathish
(Amended vide order of Court
dated 25.06.2013 made in
M.P.No.1 of 2013 in CMASR
No.38917 of 2012).
3. Smt. N. Rani
4. Nagappan ..Appellants/Claimants

Vs

The Managing Director,
Tamil Nadu State Transport Corporation,
Shickpetnadu Street,
Kancheepuram Division
Kanchi Town. ..Respondent/Defendant

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the Judgment and Decree passed by the learned Additional District Judge, Fast Track Court No.III, Thiruvallur in M.C.O.P.No.636 of 2008, dated 23.08.2010.

For Appellants : Mr.K. Varadha Kamaraj
For Respondent : Mr.K.J. Sivakumar

J U D G M E N T

The petitioners/appellants have filed this appeal against the Judgment and Decree passed by the learned Additional District Judge, Fast Track Court No.III, Thiruvallur in M.C.O.P.No.636 of 2008, dated 23.08.2010.

2. For the sake of convenience, the parties are referred to as per their litigative status before the Tribunal.

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3. The case of the petitioner is that on 29.08.2008 at about 21.45 hours, while he was proceeding in his two wheeler on the extreme left hand side of the G.S.T.Road, near Kadapperi, the respondent bus bearing Registration No.TN-21-N-1123 came at a high speed from behind dashed against the two wheeler of the deceased causing fatal injuries to the deceased who died subsequently. The accident occurred only due to the negligence of the respondent bus driver. The petitioner, who are the wife, minor children and parents of the deceased were depending on the income of the deceased. The petitioners stated that the deceased was aged 31 years and was employed as Supervisor Grade-II in Larsen and Toubro Limited, earning a sum of Rs.23,620/- per month. Thus, the petitioners sought for a sum of Rs.65,00,000/- as compensation from the respondent Transport Corporation.

4. On the other hand, the respondent by filing counter affidavit contends that the accident does not occur in the manner alleged by the petitioner. The claim of the petitioner about the age, avocation and income of the deceased is denied. The respondent bus was proceeding at normal speed in its trip from T.Nagar to Chengalpattu and while going near Tambaram Depot in G.S.T.Road at about 21.45 hours, the deceased riding his motorcycle tried to overtake the respondent bus on the left side and due to high speed was unable to control the two wheeler, lost balance and dashed on the respondent bus and invited the accident. There was no negligence on the part of the respondent bus driver. Further, the amount claimed by the petitioner is exorbitant. Since, the negligence of the deceased alone caused the accident, the respondent Transport Corporation is not liable to pay any compensation. Hence, the respondent sought for dismissal of the petition.

5. Before the tribunal, the petitioners examined P.W.1 to P.W.3 and produced documents Exs.P1 to Ex.P9 to prove their claim. On the side of the respondent, R.W.1 examined but no document produced. The Tribunal, on the basis of the available evidence, found the negligence on the part of the respondent bus driver alone caused the accident and passed an award a sum of Rs.21 lakh payable by the respondent to the petitioners. Being not satisfied with the quantum of the award passed by the Tribunal. The petitioners have come forward with the present appeal to enhance the award amount.

6. The learned counsel appearing for the petitioners/claimants contended that the Tribunal erred in fixing the income of the deceased at Rs.15,000/-, while he was earning a sum of Rs.24,077/- per month as evidenced by Ex.P9-salary slip. The Tribunal also erred in deducting 1/3rd of the income towards personal expenses instead of 1/4th. The amount

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awarded under other heads is very meagre. Hence, the petitioners have sought for enhancement of the award amount by entertaining the appeal.

7. On the other hand, the learned counsel for the respondent/Tamilnadu State Transport Corporation contends that the tribunal has wrongly awarded a higher amount as compensation to the petitioners are the award passed by the tribunal itself is on the higher side. Since the accident occurred only due to the negligence on the part of the deceased, the Tribunal fixing the negligence on the respondent bus driver is not just and proper. Thus, the respondent/Tamil Nadu State Transport Corporation sought for dismissal of the appeal.

8. Heard both sides and perused the materials available on record.

9. The petitioners examined the eye witness to the accident viz., one Baskar as PW2 and he clearly stated that the accident occurred only due to rash and negligent driving by the driver of the respondent bus. The police also registered Ex.P1-FIR against the respondent bus driver only. Further, the police after completion of the investigation, laid charge sheet against the respondent bus driver as per Ex.P5-charge sheet. The petitioners produced a copy of the rough sketch of the occurrence spot as Ex.P3. It is clear from the said documents that the negligence of the respondent bus driver alone caused the accident. Eventhough, the respondent examined R.W.1-Venkatesan to disprove the claim of the petitioners, if, really the negligence of the deceased alone caused the accident, the respondent bus driver would have lodged a complaint with the police, but no such complaint has been produced before the Court. In such circumstances, considering the oral evidence of P.W.2 and PW3 eye-witnesses to the occurrence and the fact that the police registered as Ex.P1 First Information Report and also laid Ex.P5 final report against the respondent bus driver only, it is clear that the negligence of the respondent bus driver alone caused the accident.

10. The petitioners stated that the deceased was aged 31 years and he was employed as Supervisor Grade II, Larsen & Toubro Ltd., Anna Salai, Chennai-2 as employee P.S.No.951972. The petitioners also stated that he was earning a sum of Rs.24077/- per month and produced Ex.P9-salary slip. It is clear from Ex.P7 Secondary School Leaving Certificate of the deceased as well as Ex.P2 Post Mortem report that the deceased was aged 31 years.

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11. The petitioners examined PW3-Devarajan, an employee of the said Larsen & Toubro Ltd., Anna Salai, Chennai-2 and according to him, the deceased was employed as Supervisor Grade II, earning a sum of Rs.24,077/- per month. PW3 also produced the Salary Certificate of the deceased as Ex.P9. The Tribunal, however, not accepting the same fixed the salary of the deceased at Rs.15,000/- and after deducting 1/3rd towards his personal expenses, fixed loss of dependency at Rs.10,000/- per month.

12. The learned counsel appearing for the petitioners contended that there is no justification for reducing the monthly income of the driver by the Tribunal. The said contention is just and proper and hence, the monthly income is fixed at Rs.24,000/- as per Ex.P9. Considering the age of the deceased was 31 years, it will be appropriate to add 40% towards future prospectus and as there are 3 dependents, 1/3rd of the same is to be deducted towards personal expenses of the deceased. Further, the correct multiplier to be applied is '16'. As such the 'loss of income' is calculated as follows:-

[(24000+40% (9600) – (1/3 (11200)] = Rs.22,400/-
Rs.22400 * 12 *16 = Rs.43,00,800/-

Thus, a sum of Rs.43,00,800/- is granted as compensation under the head "Loss of Dependency".

13. In respect of awarding compensation under conventional heads, as per the Constitution Bench judgment of the Hon'ble Supreme Court reported in 2017 (2) TN MAC 609 (SC) [National Insurance Company Ltd., Vs. Pranay Sethi and Others], the compensation has to be awarded towards loss of consortium, loss of estate and funeral expenses and hence, this court is inclined to grant towards loss of consortium a sum of Rs.40,000/-; loss of estate a sum of Rs.15,000/- and funeral expenses a sum of Rs.15,000/-.

14. Accordingly, the compensation awarded by the Tribunal stands modifies as follows:-

Sl. No.	Head	Amount granted by the Tribunal (Rs)	Amount awarded by this Court (Rs)
1	Loss of dependency	20,40,000.00	43,00,800.00
2	Loss of Consortium	30,000.00	40,000.00
3	Loss of Love and Affection for the 2nd petitioner and 3rd and 4th petitioners	25,000.00	---
4	Loss of estate	---	15,000.00

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Sl. No.	Head	Amount granted by the Tribunal (Rs)	Amount awarded by this Court (Rs)
5	Funeral Expenses	5,000.00	15,000.00
	Total	21,00,000.00	43,70,800.00

15. In the result, the Civil Miscellaneous Appeal is Partly Allowed as follows:-

(i) The award of the Tribunal is enhanced to Rs.43,70,800/- from Rs.21,00,000/-.

(ii) The award amount will carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

(iii) In view of the above enhanced award amount, the respondent/Tamilnadu State Transport Corporation is directed to deposit the award amount, less the amount, if any, already deposited, along with accrued interest within a period of six weeks from the date of receipt of a copy of this judgment.

(iv) The apportionment of the modified enhanced award amount is as follows:-

Petitioners 1&2 - 40% each
Petitioners 3&4 - 10% each

(v) On such deposit, the 1st, 3rd and 4th petitioners are permitted to withdraw the amount awarded as above by filing proper application before the Tribunal. The Tribunal shall pass appropriate directions for the disbursal of the amount as stated supra on the filing of such application.

(vi) The share of the 2nd petitioner/minor is directed to be deposited in any one of the nationalised bank till they attain majority.

(vii) Petitioners/appellants shall pay necessary court fee before receiving the copy of this judgment for the enhanced compensation amount.

(viii) No costs.

Sd/-
Assistant Registrar(CS-ii)

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Sub Assistant Registrar

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To

The Additional District Judge,
(the Motor Accident Claims Tribunal)
Fast Track Court No. III,
Thiruvallur.
(Addl. Court fee filed 02.08.2018 vide usr 60049)

COPY TO

The Section Officer,
V.R. Section, High Court, Madras.(2 copies)

+1cc to Mr.K.VARADHAKAMARAJ, Advocate, S.R.No.21649
+1cc to Mr.K.J.SIVAKUMAR, Advocate, S.R.No. 22437

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