

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.558 of 2016  
and CMP.No.4644 of 2016

The Managing Director  
State Express Transport Corporation Ltd.,  
Pallavan Salai,  
Chennai-2

...Appellant  
/respondent.

Vs

1.Vedhanayaki  
2.Minor Selinmary  
3.Minor Brindha  
4.Minor Joyson  
5.Victoriya  
6.Lurdusamy  
7.Mariyammal  
2<sup>nd</sup> 3<sup>rd</sup> and 4<sup>th</sup> Minor respondents  
rep. By their next friend  
Mother Vedhanayaki

..Respondents 1 to 7  
/Petitioners 1 to 7

Civil Miscellaneous Appeal U/s. 173 of Motor Vehicles Act, 1988 filed against the judgment and decree dated 10.11.2014 passed in M.C.O.P.No.628 of 2011 on the file of Motor Accidents Claims Tribunal, Additional Judge, Tindivanam.

For appellant : : Ms..A.Antony Arockiyaraja & R.Vimal  
for Respondents : : Mr.D.Ravichander for R1 to R7.

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 10.11.2014 passed in M.C.O.P.No.628 of 2011 on the file of Motor Accidents Claims Tribunal, Additional Judge, Tindivanam.

2. For the sake of convenience, the parties are referred to as per their litigative status before the Tribunal. The case of the Petitioners is that on 21.06.2011, the deceased Mahimaidass, after taking food at a Road side Hotel at Koochikolathur

Village, while trying to cross the road in the Chennai-Trichy GST Road, as he was standing near central median, around 9 p.m., the State Express Transport Corporation bus bearing Reg.No.TN1-N-7074 proceeding from Tindivanam to Chennai, came at high speed and while attempting to overtake a Lorry, dashed against the deceased, resulting in his death on the spot. The accident occurred only due to the negligence of the respondent Transport corporation bus driver. The Petitioners who are the wife, children, sister and parents of the deceased contend that the deceased was aged 36 years and by working as Head Mason was earning Rs.15,000/- per month. Due to his death, the family has lost the sole bread winner and his pecuniary contribution to the family. Thus the petitioners sought Rs.10,00,000/- as compensation from the respondent Transport Corporation.

3. On the other hand, opposing the claim of the Petitioners, by filing counter, the respondent/Transport Corporation contend that the accident did not occur in the manner alleged by the Petitioners. While the Transport Corporation bus was proceeding at normal speed, near Koochikolathur, a body was lying near the central median and as the vehicle involved in the accident fled away, a false complaint is lodged against the respondent bus driver on the next day only. Even though the bus driver explained the details, a false FIR has been lodged by the Police. The Petitioners 5 to 7 are not the legal heirs of the deceased and they are not dependant on the income of the deceased. The petition averments regarding the age, avocation and income of the deceased are not true. The claim of the Petitioners is exorbitant. Thus, the respondent/Transport Corporation sought for dismissal of the Petition.

4. Before the Tribunal, the petitioners examined the 1st petitioner as P.W.1, eyewitness to the accident as P.W.2 and produced documents Ex.P.1 to Ex.P.3 to prove their claim. On the side of the respondent/Transport Corporation, R.W.1-Durairaj was examined and produced documents Ex.R.1 to Ex.R.14 to disprove the claim of the Petitioners. The Tribunal after analysing the evidence on record, found that the negligence of the respondent bus driver alone caused the accident, passed the award for a sum of Rs.7,29,800/- payable by the respondent/Transport Corporation to the petitioners. Aggrieved over the said finding, the respondent-Transport Corporation has come forward with the present appeal.

5. The learned counsel for the appellant/respondent/Transport Corporation contends that the Tribunal failed to analyse the evidence on record properly and wrongly fixed the negligence on the part of the respondent bus driver as the cause for the accident. The multiplier adopted by the Tribunal is not correct. The Tribunal erred in fixing the

monthly salary of the deceased at Rs.4500/-. The Tribunal ought to have fixed the monthly salary at Rs.3000/- only. The amount awarded under other heads is very high. Thus the appellant/respondent/Transport Corporation sought for setting aside the award passed by the Tribunal by allowing the appeal.

6. Per contra, the learned counsel for the petitioners/claimants contended that the accident occurred due to rash and negligent driving by the respondent bus driver, resulting in the death of the deceased Mahimaiddoss on the spot itself. The Tribunal correctly appreciated the evidence available on record and passed just and reasonable award and the same needs no interference. Hence, the Petitioners/claimants sought for dismissal of the appeal.

7. The 1st petitioner who deposed as P.W.1 stated that the accident occurred on 21.06.2011 at about 9.00 p.m., while the deceased was standing in the middle of the road near the central median, while crossing the Trichy-Chennai GST Road. Admittedly, P.W.1 is not the eyewitness to the accident. The person who witnessed the accident deposed as P.W.2 and he stated that the respondent bus was coming from Tindivanam towards Chennai and as the driver of the bus attempted to overtake a Lorry going ahead of him, dashed against Mahimaiddoss, who was standing near the Central Median of the road, resulting in his death on the spot.

8. On the other hand, the driver of the respondent bus, who deposed as R.W.1 stated that no such accident took place. According to him, a dead body was lying in the road surrounded by a group of people and as the vehicle which caused the accident has fled away, a false complaint has been lodged against the respondent bus which crossed the occurrence spot immediately, after the deceased was hit by an unknown vehicle. The respondent/Transport Corporation also produced a copy of the complaint/representation sent by bus driver R.W.1-Durairaj to the Superintendent of Police, Villupuram, Chief Minister Special Cell, along with postal acknowledgement for the same as Ex.R.1 Ex.R.14. However, there is nothing available on record as to whether any follow up action was taken on the said complaint given by R.W.1 and whether R.W.1 took any steps to quash the case registered against him. The Police have registered Ex.P.1-FIR against the driver of the respondent bus only. In the said FIR, the respondent bus registration number and the complaint lodged details are given. Even though R.W.1 admitted that he was examined by Olakur Police on 25.06.2011, no immediate action was taken by him and there is no reason stated by the respondent as to why false complaint was given against the bus owned by the respondent. It is further clear from Ex.P.2 Motor vehicle Inspector's report that there was no mechanical defect in the offending vehicle. In such circumstances, it is clear from the available evidence that the accident occurred only due to the

rash and negligent driving of the respondent bus driver.

9. The 1<sup>st</sup> petitioner's claim is that the deceased was aged 36 years and by working as Head Mason was earning Rs.15,000/- per month. As per Ex.P.3-Post mortem Report, the deceased was stated to be 36 years. The petitioners have not produced any documents regarding the avocation and income of the deceased. However, the Tribunal fixed the age of the deceased as 45 years., taking into account the fact that the wife/1st petitioner was aged 30 years on the date of filing of the petition. However the same is not proper. Hence, it will be appropriate to fix the age of the deceased as 36 years on the basis of Ex.P.3 Post Mortem report. The 1<sup>st</sup> Petitioner claims that the deceased was earning Rs.15,000/- per month, but, there is no proof for the same. As such, the Tribunal is justified in fixing the salary at Rs.4500/- per month.

10. It is seen from the available evidence that the 5th petitioner is the sister of the deceased and there is nothing on record to show that she was dependant on the deceased. As such, the dependants will be only six persons. Unless and until the deceased family exceeds six persons, only 1/4<sup>th</sup> of the income has to be deducted towards personal expenses of the deceased. Thus the contribution of the deceased to the family has to be arrived at by deducting 1/4<sup>th</sup> of the monthly salary of the deceased ie., Rs.4500/-.As the deceased was stated to be 36 years old, the multiplier to be applied is 15. Thus the loss of dependency is calculated as follows:-

Monthly salary - 4500/-

Deduction 1/4<sup>th</sup> (Rs.1125) 4500 - 1125 = Rs.3375/-

3375 x 12 x 15 = Rs.6,07,500/-.

Thus, a sum of Rs.6,07,500/- is awarded under the head "loss of dependency". Considering the facts and circumstances of the case, the sum of Rs.10,000/- granted by the tribunal under the head "Transport Expenses" is confirmed. Following the Apex court decision reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and Others], the amount awarded under the head loss of love and affection is set aside. By applying the Ruling of the Supreme Court reported in above said decision (cited supra) 2017 (2) TN MAC 609 (SC), the compensation towards conventional heads, is as under:-

Funeral expenses - 15,000/-

Loss of estate - 15,000/-

Loss of consortium - 40,000/-

Add: Loss of dependency - 6,07,500/-

Transport expenses - 10,000/-

Total = Rs.6,87,500/-

Accordingly, the compensation awarded by the Tribunal stands modified from Rs.7,29,800/- to Rs.6,87,500/- as shown below.

| Sl.N<br>o. | Heads                                                                | Amount awarded<br>by the tribunal | Amount awarded<br>by this Court |
|------------|----------------------------------------------------------------------|-----------------------------------|---------------------------------|
| 1          | Loss of love and affection<br>to petitioners 1 to 7                  | Rs. 70,000/-                      | ---                             |
| 2.         | Loss of consortium to 1 <sup>st</sup><br>petitioner                  | Rs. 30,000/-                      | Rs. 40,000/-                    |
| 3.         | Pecuniary loss to the<br>dependants of the family<br>of the deceased | Rs. 6,04,800/-                    | Rs. 6,07,500/-                  |
| 4.         | Ambulance &Transport<br>expenses                                     | Rs. 10,000/-                      | Rs. 10,000/-                    |
| 5.         | Funeral expenses                                                     | Rs. 15,000/-                      | Rs. 15,000/-                    |
| 6          | Loss of Estate                                                       | ---                               | Rs. 15,000/-                    |
|            | Total                                                                | Rs.7,29,800/-                     | Rs.6,87,500/-                   |

11. In the result,

(i) This Civil Miscellaneous Appeal is Partly Allowed;

(ii) The award amount is reduced to Rs.6,87,500/- from Rs.7,29,800/-;

(iii) The award amount will carry interest at the rate of 7.5% from the date of petition till the date of realisation;

(iv) It is seen from the order of this Court dated 15.03.2016 passed in CMP.No.4644 of 2016 in CMA.No.558 of 2016 that the Appellant/Transport corporation was directed to deposit the entire award amount along with proportionate interest, as ordered by this court, less the amount, if any already deposited. Hence, the Appellant/Transport is entitled to withdraw the excess amount, if any in deposit, after satisfying the order of this court.

(v) The Petitioners 1, 5 to 7/Respondents 1, 5 to 7 are entitled to the award amount on the following apportionment:-  
1<sup>st</sup> petitioner/wife-30%;

2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> petitioners-20% each; and  
petitioners 5 to 7 are entitled to equal share in the balance 10%.

The Petitioners 1, 5 to 7/Respondents 1, 5 to 7 are entitled to withdraw their respective shares of the award amount along with accrued interest. The Tribunal shall pass necessary orders for disbursal of the award amount by following the appropriate

procedure. Insofar as Minor Petitioners 2, 3 and 4 are concerned, their shares shall be invested in Fixed Deposit in a Nationalised Bank, till they attain the age of majority. The interest accrued on the minor shares shall be withdrawn by their guardian/mother once in three months.

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

Sd/-  
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

nvsri

To

1.The Additional Judge,  
Motor Accident Claims Tribunal,  
Tindivanam.

+1cc to Mr.A.Antony Arockiaraja, Advocate Sr.No.29224

KS(CO)  
sm:14.5.2018

C.M.A.No.558 of 2016



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