

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.1838 of 2014
and M.P.No.1 of 2014

The Managing Director
Tamil Nadu Transport Corporation Ltd
Vazudhareddy
Villupuram

..Appellant/Respondent

-Vs-

1.M.Revathi
2.M.Murali
3.M.Nathiya

..Respondents 1 to 3
/Petitioners 1 to 3

4.A.Muthupalani

..Respondent No.4
/2nd Respondent

5. The United India Insurance
Co.Ltd.,
No.13-A, Nethaji Road
Manjakuppam, Cuddalore

..Respondent No.5
/3rd respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, against the order and decree dated 25.06.2012 made in M.C.O.P.No.674 of 2010 on the file of Motor Accident Claims Tribunal, Principal District Court, Cuddalore.

For appellant
For Respondents

: : Mr.S.V.Vasantha Kumar
: : Mr.A.N.Viswanatha Rao
and Ms.Ramya V.Rao for R1 to R3.
Mr.J.Chandran for R5.
R4-Remained Exparte.

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J U D G M E N T

The Appellant/Transport Corporation has filed this appeal challenging the order and decree dated 25.06.2012 made in M.C.O.P.No.674 of 2010 on the file of Motor Accident Claims Tribunal, Principal District Court, Cuddalore.

2. For convenience sake, the parties are referred to hereunder according to their litigative status before the Tribunal. It is a fatal case. The case of the Petitioners is that on 12.09.2009 at about 5 a.m., while the deceased Mohan was travelling as Duty Conductor in the first respondent bus bearing Reg.no.TN-32-N-3260 from North to South in Madurai to Trichy Main Road, while going near Karungalakudi, the 2nd respondent lorry bearing Reg.No.TN-67-V-9396 was parked in the middle of the road without any indication and due to that, the respondent bus dashed against the said lorry, resulting in the accident, wherein, the petitioner suffered multiple fractures all over the body including head and inspite of treatment died in the hospital at about 7.15 a.m. The accident was due to negligence of the 2nd respondent lorry driver only. The deceased was aged 48 years and by working as a conductor of the 1st respondent transport corporation, was earning Rs.16,000/- per month. The Petitioners are the children of the deceased and stated to be depending on his earnings. Thus, due to demise of the bread winner of the family, the Petitioners are suffering from loss of income. Therefore, the Petitioners sought for a sum of Rs.25,00,000/- as compensation from the respondents.

3. On the other hand, opposing the claim of the Petitioners, by filing counter, the 1st respondent contends that the respondent bus was proceeding in normal speed from Tiruchy to Madurai, while going near Karukalakudi, the Lorry bearing Reg.No.TN-67-B-9396 suddenly stopped without any signal and on seeing that the driver of the respondent bus, applied brake, turned to the right, but still due to long coconut woods which was projecting 10 feet beyond the body of the lorry hit the bus and thereby the accident occurred. The 1st respondent driver is no way negligent. The claim of the Petitioners is exorbitant. The amount sought for by the Petitioners is not based on any acceptable material. Thus, the 1st respondent sought for dismissal of the Petition.

4. The 3rd respondent/Insurance company filed counter contending that the 2nd respondent driver was not having valid driving licence and the lorry did not have proper insurance and Permit. The accident occurred only due to negligent driving of the 1st respondent bus, which dashed against the 2nd respondent lorry which was parked and as such, the accident occurred only due to negligence of the bus driver. The claim of the Petitioners is unsustainable. Thus, the 3rd respondent sought for dismissal of the petition.

5. Before the Tribunal, the Petitioners examined P.W.1 and P.W.2, produced documents Ex.P.1 to Ex.P.7 to prove their contention. On the side of the respondent, the driver of the respondent bus deposed as R.W.1, but no document was marked. The Tribunal, after analyzing the evidence on record, found negligence of the 1st respondent bus driver alone caused the accident, passed an award for a sum of Rs.12,67,000/- payable by the 1st respondent corporation and dismissed the petition against R2 and R3.

6. Aggrieved over the said finding, the 1st respondent Transport Corporation has come forward with the present appeal.

7. Heard both sides and perused the records carefully.

8. The learned counsel for the 1st respondent/Transport Corporation contends that the Tribunal failed to consider the fact that the Police registered case against the 2nd respondent lorry driver only. The Tribunal also failed to consider the evidence on record to the effect that due to sudden stopping of the 2nd respondent lorry only, the accident occurred. The Tribunal wrongly adopted multiplier 11 instead of 8 and also fixed the income of the deceased wrongly at Rs.14,000/- per month. The quantum of the award passed by the Tribunal is highly excessive. Thus the 1st respondent/Transport Corporation seeks to set aside the award passed by the Tribunal by entertaining the appeal.

9. Per contra, the learned counsel for the Petitioners/claimants contends that the accident occurred due to negligence of the 1st respondent driver resulting in the death of bread winner of the family. The tribunal has passed just and fair award, which needs no interference. Thus, the Petitioners/claimants sought for dismissal of the appeal.

10. The fact that the deceased was employed in the 1st respondent-Transport Corporation and on the occurrence day, he was on duty as Conductor in the respondent bus bearing Reg.No.TN-32-N-3260 is admitted. The said bus met with an accident involving the 2nd respondent Lorry bearing Reg.No.TN-67-B-9396 is also admitted. The only contention is whose negligence the accident occurred.

11. The 2nd petitioner who is the son of the deceased deposed as P.W.1 and stated about the occurrence. However, he is not the eyewitness to the accident. The person who witnessed

the accident deposed as P.W.2 stating that on 12.09.2009, while he was travelling in the 1st respondent bus from Trichy to Madurai at about 5.00 a.m., near Karukkalakudi, the said bus dashed against the 2nd respondent lorry which was parked in the middle of the road without any parking lamps resulting in the accident. Thus according to P.W.2, the accident occurred only due to negligence of the 2nd respondent lorry driver. The Police also registered Ex.P.1-FIR against the 2nd respondent lorry driver.

12. On the other hand, contesting the same, the 3rd respondent/Insurance company contends that there was no negligence on the part of the 2nd respondent lorry driver and he is no way responsible for the occurrence. The 1st respondent bus driver deposed as R.W.1 stated that on 12.09.2009, he took the bus from Villupuram to Madurai and while going near Karukkalakudi in Tiruchy to Madurai Road, the Lorry which was going in front of him with heavy coconut woods projecting 10 feet away from the body of the lorry, suddenly stopped and even though R.W.1 applied brake and turned the bus to the left, long wooden log projecting out of the lorry hit the bus, resulting in the accident.

13. It is clear from P.W.2 evidence that as the backdoor of the Lorry was completely not visible and the reflector was hidden. However, as the vehicles were on the highways, it is the duty of the 1st respondent bus driver to proceed at safe distance. But the evidence shows that the 1st driver was forced to stop the bus by applying brake and the accident occurred. In the present case, if the transport bus driver followed the rules, he would have avoided hitting of the lorry even after the driver of the lorry applying sudden brake. It is further stated that the lorry was parked and the respondent bus dashed against it. It is clear from Ex.P.3-MVI report that there was no damage in the occurrence. On the other hand, MVI Report of the bus is marked as Ex.P.2 showing that the bus suffered multiple damages in the accident. It is therefore clear that only because of the high speed, in which the 1st respondent bus was driving, it dashed against the lorry and suffered damages, If only the driver of the bus has gone at normal speed, even if the 2nd respondent lorry was parked on the middle of the road, driver of the bus could have avoided the accident by stopping the bus or turning it on either side. Thus, the driver of the bus was negligent and he alone was responsible for the accident.

14. The Petitioners state that the deceased was employed as a Conductor in the 1st respondent transport corporation and was earning Rs.16,000/- per month. The age of the deceased is stated to be 48 years. The Petitioners have not produced any documentary proof for the age of the deceased. As per Ex.P.5

Post Mortem Certificate, the age is stated to be 50 years. In the absence of any documentary proof on the basis of Ex.P.5-Post Mortem certificate, the correct age of the deceased is fixed at 51 years. For the said age, the multiplier to be applied is 11 as per Ruling in Sarla verma Vs Delhi Transport Corporation and another [2009 (2) TN MAC 1 (SC)]. The Tribunal, has fixed the monthly income of the deceased at Rs.14,000/-, deducted 1/3rd towards his personal expenses and arrived his annual income at Rs.1,68,000/- [Rs.14,000/- x 12] After deducting 1/3rd, 2/3rd of annual income of the deceased is taken for the purpose of calculating the compensation i.e., Rs.1,12,000/-. [1,68,000/- - 56,000/- = Rs.1,12,000/-]. The Tribunal adopted multiplier 11 and arrived at loss of dependency as under:-

$1,12,000/- \times 11 = \text{Rs.}12,32,000/-$.

Even though the Tribunal adopted the correct multiplier "11", it is contended by the learned counsel for the appellant/Transport corporation that as the deceased was aged 51 years and was having only eight more years of service, the multiplier to be applied is only '8' and not '11' as adopted by the Tribunal.

15. On the other hand, opposing the same, the learned counsel for the Petitioners/claimants relying upon the Ruling of the Apex Court reported in (2011) 4 SCC 689 [K.R.Madhusudhan and others Vs Administrative Officer and another] contended that the Tribunal is justified in adopting multiplier "11" and there is no need to interfere with the same. In the said Ruling, it is held as follows:-

"14. In the appeal which was filed by the appellants before the High Court, the High Court instead of maintaining the amount of compensation granted by the Tribunal, reduced the same. In doing so, the High Court had not given any reason. The High Court introduced the concept of split multiplier and departed from the multiplier used by the Tribunal without disclosing any reason therefor. The High Court has also not considered the clear and corroborative evidence about the prospect of future increment of the deceased. When the age of the deceased is between 51 and 55 years, the multiplier is 11, which is specified in the 2nd column in the Second Schedule to the Motor Vehicles Act, and the Tribunal has not committed any error by accepting the said multiplier. This Court also fails to appreciate why the High Court chose to apply the multiplier of 6. "

It is apparent from the above said discussion that the deceased being aged 51 years, the Tribunal has correctly applied

multiplier "11" and there is no need to modify the same. Thus, the loss of dependency is calculated as follows:-

Monthly salary: Rs.14,000/-,

1/3rd deducted towards his personal expenses

Annual income at Rs.1,68,000/- [Rs.14,000/- x 12]

After deducting 1/3rd, 2/3rd of annual income of the deceased is taken for the purpose of calculating the compensation

1,68,000/- - 56,000/- = Rs.1,12,000/-.

Loss of dependency is 1,12,000/- x 11 = Rs.12,32,000/- .

15. Following the decision of Apex Court in National Insurance Co. Ltd., Vs. Pranay Sethi and others [2017 (2) TN MAC 609 (SC)], in respect of conventional heads viz., Rs.15,000/- towards "Funeral expenses", and Rs.15,000/- towards "loss of estate" is provided. However, taking note of the fact that the claimants are the daughters and son of the deceased who are aged 23, 21 and 19 years respectively, this court is not inclined to award any sum towards "loss of love and affection". As such, the sum of Rs.30,000/- provided by the Tribunal, under the said head is set aside. Thus, the modified compensation will be as under:-

Sl.No.	Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
1.	Loss of dependency	12,32,000/-	12,32,000/-
2.	Loss of love and affection	30,000/-	---
3.	Funeral expenses	2,500/-	15,000/-
4.	Transport expenses	2,500/-	2,500/-
5.	Loss of estate	--	15,000/-
	Total	12,67,000/-	12,64,500/-

16. In the result,

(i) The Civil Miscellaneous Appeal is Partly Allowed;

(ii) The award amount is reduced to Rs.12,64,500/- from Rs.12,67,000/-

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

(iv) This court by order dated 08.07.2014 directed the Appellant/Transport corporation to deposit 50% of the entire

award along with proportionate interest and cost. Therefore, the appellant shall satisfy the award amount as ordered above, within a period of six weeks from the date of receipt of a copy of this order.

(v) The claimants are entitled to withdraw the award amount in equal share, along with accrued interest. The Tribunal shall pass necessary orders following the appropriate procedure for disbursement of the award amount.

No costs. Consequently, connected MP is closed.

Sd/-

Assistant Registrar(CS V)

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Sub Assistant Registrar

nvsri

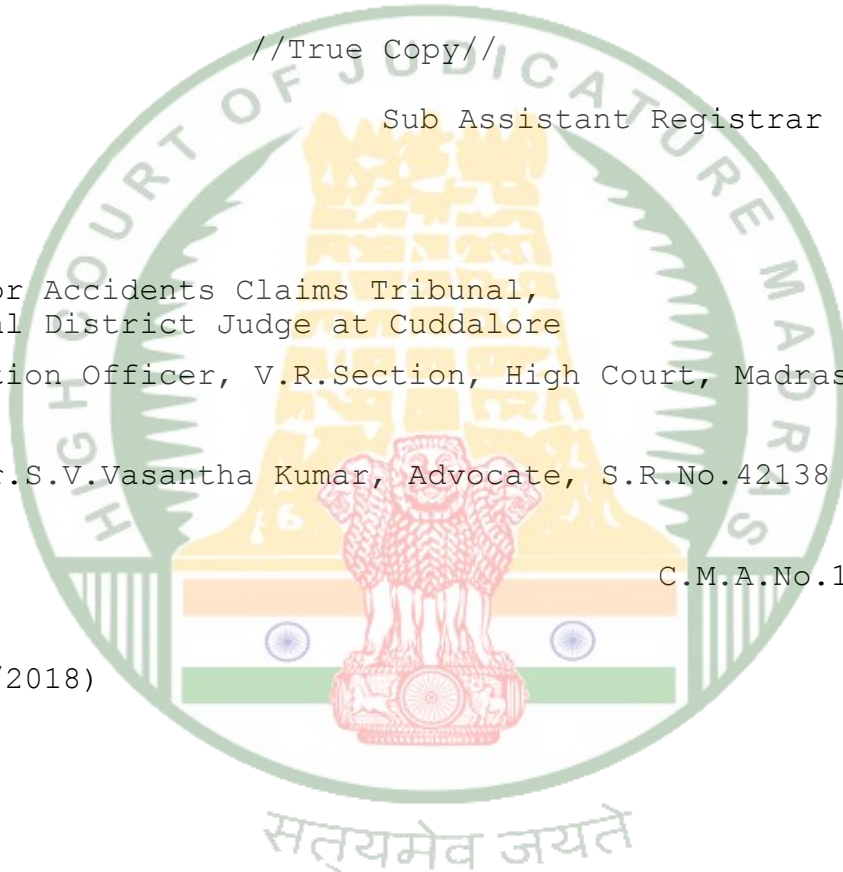
To

- 1.The Motor Accidents Claims Tribunal,
Principal District Judge at Cuddalore
- 2.The Section Officer, V.R.Section, High Court, Madras.

+lcc to Mr.S.V.Vasanth Kumar, Advocate, S.R.No.42138

C.M.A.No.1838 of 2014

MG(CO)
GSP(27/09/2018)



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