

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.671 of 2018
and C.M.P.No.5916 of 2018

The Managing Director,
Tamil Nadu State Transport,
Corporation, Trichy.

..Appellant/Respondent

Versus

1.Nagaraaj
2.Siranjeevi

..Respondents/Claimants

Civil Miscellaneous Appeal filed against the judgment and decree dated 15.05.2017 made in M.C.O.P.No.759 of 2010 on the file of the Motor Accident Claims Tribunal, Additional Subordinate Judge, Puducherry.

For Appellant : Mr.D.Venkatachalam

For Respondents : Mr.R.Sreedhar for cavetor

J U D G M E N T

The Appellant/Transport Corporation has filed this appeal against the judgment and decree dated 15.05.2017 made in M.C.O.P.No.759 of 2010 on the file of the Motor Accident Claims Tribunal, Additional Subordinate Judge, Puducherry.

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

3. The case of the petitioners is that on 16.06.2010 while the deceased was proceeding in his two wheeler bearing Registration No.PY-01-AC-0344 in the East Cost Road from North-South at about 5.30 p.m near Anandha Rangapillai Government

Special School, Pillaichavady, the respondent bus bearing Registration No.TN-45-N-2701 came from behind at high speed dashed against the two wheeler, which the deceased was riding with one Gopal as pillion rider, resulting in the death of said Muniappan at the spot itself, while the pillion rider also suffered fatal injuries; the accident occurred due to negligence of the respondent bus driver only. The deceased was aged 18 years and was working as a Fisherman. The petitioners, who are the father and brother of the deceased contended that by working as a fisherman the deceased contributed to the family and the death resulted in the loss of income to them. Thus, the petitioners sought for Rs.15,00,000/- from the respondent/Transport Corporation.

4. On the other hand, opposing the claim of the petitioners, by filing counter, the respondent/Transport Corporation contends that the petitioners are not legal heirs and dependent of the deceased and as such they are not entitled to seek compensation. The accident has not occurred as alleged by the petitioners, but only due to rash and negligent driving of the two wheeler by the deceased. The driver of the respondent bus lodged the complaint to the police about the accident. The driving license of the driver of two wheeler is not produced. The claim of the petitioners is exorbitant. Thus, the respondent/Transport Corporation sought for dismissal of the petition.

5. Before the Tribunal, the petitioners examined P.W.1 to P.W.3 and produced documents Exs.P.1 to P.10 to prove their claim. On the side of the respondent R.W.1 was examined, but no document was produced. On the basis of available evidence, the Tribunal fixed the negligence on the part of the respondent driver alone caused the accident and awarded a sum of Rs.12,17,000/- as compensation to the petitioners. 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 contends that the Tribunal without appreciating the evidence properly fixed the negligence on the part of the respondent's bus driver and the same is not correct. The Tribunal ought to have held that the negligence on the part of the deceased alone caused the accident. The Tribunal erred in adding 50% of the amount towards future prospectus instead of adding 40%. As the deceased was a Bachelor, the Tribunal ought to have deducted 50% of the amount towards personal expenses instead of 1/3rd deducted. Thus, the respondent/Transport Corporation seeks to entertain the appeal and to reduce the quantum of the award passed by the Tribunal.

7. On the other hand, the learned counsel for the petitioners/claimants contends that the Tribunal, without considering the evidence properly, passed the award granting less amount rather than sought for by the petitioners in the petition. According to the petitioners, no ground is made out to interfere with the award passed by the Tribunal. Hence, the petitioners/claimants sought for dismissal of the appeal. The petitioners stated that on the fateful day, while the deceased was riding his two wheeler with P.W.2 - Gopal, as the pillion rider, met with an accident as alleged in the petition. The eye-witness to the occurrence, who deposed as P.W.2, clearly stated that the deceased was going in his two wheeler to purchase diesel and on the way, the respondent bus came at high speed dashed against the two wheeler, resulting in the death of the rider of the two wheeler.

8. On the other hand, the driver of the respondent/Transport Corporation, who deposed as R.W.1, stated that while he was proceeding from Vailankanni to Chennai, two motor cycles colluded due to which the deceased fell down, but the case was registered against him by the police without properly verifying the occurrence. The evidence of R.W.1 cannot be taken note of seriously as it was a self interest evidence. Further, the police have registered Ex.P.1 - F.I.R against the respondent bus driver only. If really, the accident occurred only between two motor cycles, there is no need for the police to register the case against the respondent bus driver. In such circumstances, considering the evidence of P.W.2 - Gopal and the fact that the police registered Ex.P.1 - F.I.R against the respondent bus driver only, it is clear that the accident occurred only due to rash and negligent driving of the respondent/bus driver.

9. The petitioners stated that the deceased Muniappan who is the son of the 1st petitioner and brother of 2nd petitioner, was aged 18 years and was earning Rs.900/- per day from his work as a fisherman. The petitioners produced the birth certificate of the deceased as Ex.P.7 and his death certificate as Ex.P.8, the family Ration Card of the deceased is Ex.P.9 while the Post Mortem Report is Ex.P.5. It is evident from the said documents that the deceased was aged 18 years.

10. Even though, the deceased was stated to be earning Rs.900/- per day, there is no acceptable evidence to prove the same. Considering the fact that the deceased worked as a fisherman and the accident took place on 16.06.2010, the monthly income of the deceased is fixed at Rs.6,500/-. Considering the fact that the deceased was aged 18 years, it will be appropriate to add 40% of the income towards future prospectus. Since the deceased was a Bachelor, 50% of income is deducted towards

personal expenses and the correct multiplier '18' is applied instead of '14' applied by the tribunal. Thus, the contribution to the family will be,

$$[(6500+40\%)-4550*12*18] = \text{Rs.}9,82,800/-$$

Thus, a sum of Rs.9,82,800/- is granted as compensation under the head "Loss of Income". Further, under the head "Transport Charges" Rs.20,000/- is awarded. The amount awarded under the head "Love and Affection" Rs.1,00,000/- by the Tribunal, is confirmed. In respect of awarding compensation under conventional heads, as per the Constitution Bench judgment of the Supreme Court reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and Others], the compensation be awarded towards loss of estate and hence, this court is inclined to grant a sum of Rs.15,000/- towards loss of estate. At the same time, the amount of Rs.25,000/- awarded under the head funeral expenses is reduced to Rs.15,000/-.

11. Accordingly, the compensation awarded by the Tribunal stands modified as follows:

Sl. No.	Head	Amount granted by the Tribunal	Amount awarded by this Court
1	Loss of dependency	Rs.10,92,000.00	Rs.9,82,800.00
2	Love and affection	Rs. 1,00,000.00	Rs.1,00,000.00
3	Funeral Expenses	Rs. 25,000.00	Rs. 15,000.00
4	Loss of Estate	-	Rs. 15,000.00
5	Transportation	-	Rs. 20,000.00
6	Total	Rs.12,17,000.00	Rs.11,32,800.00

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

- (i) The award of the Tribunal is reduced to Rs.11,32,800/- from Rs.12,17,000/-.
- (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 reduced award amount, the appellant/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 order.
- (iv) On such deposit, the 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.

(v) The apportionment of the modified award amount is as under:-

First petitioner -50%

Second petitioner -50%

Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar(CS II)

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Sub Assistant Registrar

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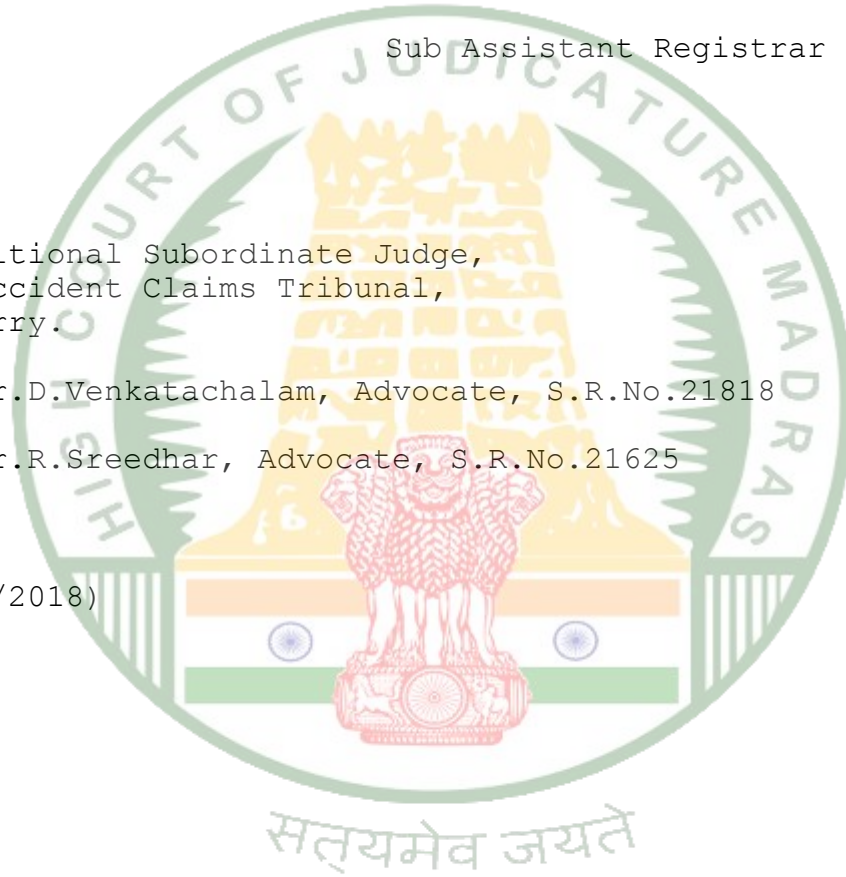
1.The Additional Subordinate Judge,
Motor Accident Claims Tribunal,
Puducherry.

+1cc to Mr.D.Venkatachalam, Advocate, S.R.No.21818

+1cc to Mr.R.Sreedhar, Advocate, S.R.No.21625

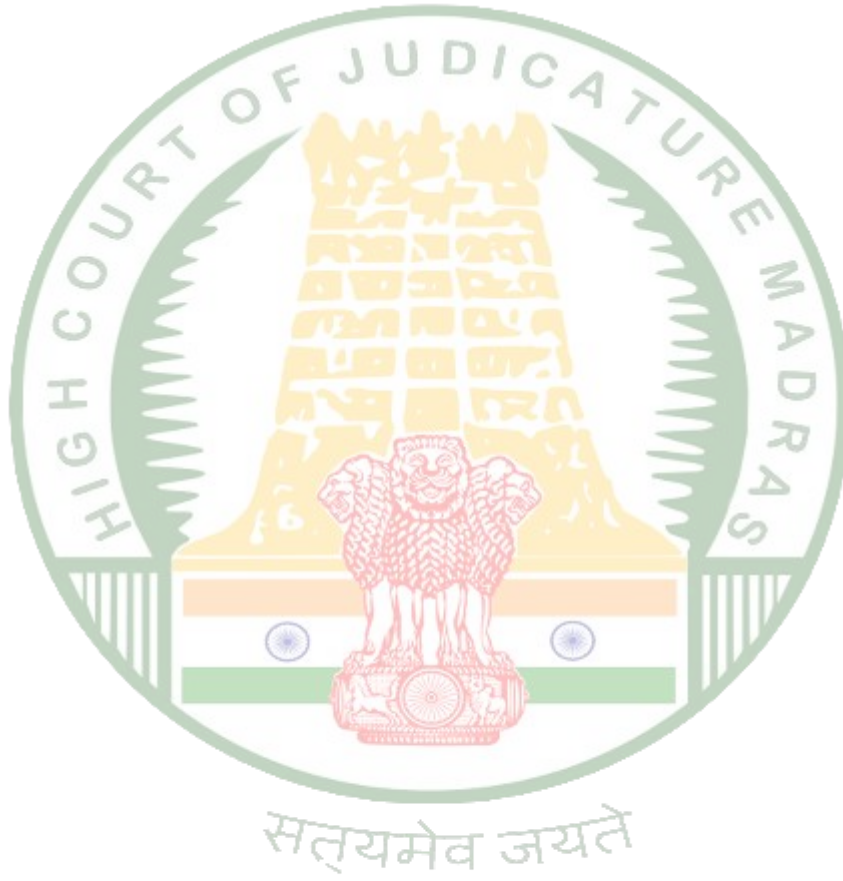
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