

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.M.A.No.1813 of 2018
and
C.M.P.No.13989 of 2018

The Managing Director,
Tamil Nadu State Transport Corporation,
New Railway Station Road,
Kumbakonam Town and Munsifi.

... Appellant /1st Respondent

-vs-

1.Mythili

2.Minor Sivaharini

3.Minor Rithick

(Minors Rep by Mother the 1st Respondent)

4.Nagarathinam ... Respondents 1 to 4/Petitioners

5.Punitha ...5th Respondent/2nd Respondent

6.The Branch Manager,

M/s.The Oriental Insurance Company Limited,
Having Office at Gopal Rao Library Buildings,
Town Hall Road, Kumbakonam Town and Munsifi.

...6th Respondent/3rd Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 to set aside the decree and judgment dated 20.03.2017 made in MCOP.No.258 of 2014 on the file of the Motor Accident Claims Tribunal, Subordinate Judge, Mannargudi.

For Appellant : Mr.D.Venkatachalam

For Respondents: Mr.D.Lakshmipathy for R1 to R4
Mr.R.Shivakumar for R6
R5 - Not ready

J U D G M E N T

[Judgment of the Court was delivered by R.SUBRAMANIAN,J.]

The Transport Corporation which suffered an award for a sum of Rs.37,88,435/- for the death of one Karthikeyan who died in a motor accident that occurred on 01.04.2010 is the appellant.

2. According to the claimants, the deceased Karthikeyan who was working as Head Constable in Tamil Nadu Police Service was travelling as a pillion rider in a motor cycle bearing registration No.TN-50-Z-7725 along with one Ramesh, who was riding the same with great care and caution by observing traffic rules. While so, the bus bearing registration No.TN-49-N-0974 belonging to the appellant Corporation which was driven in a rash and negligent manner by its driver dashed against the motor cycle. As a result of the impact, the deceased sustained grievous injuries and was admitted in Government Hospital, Mannargudi, thereafter, he was shifted to Kauvery Hospital, Trichy for a better treatment. Despite treatment he succumbed to injuries on 26.04.2010 at Kauvery Hospital, Trichy. Holding the driver of the corporation bus responsible for the accident, the claimants sought for a compensation of Rs.50,00,000/-.

3. The Corporation resisted the claim petition contending that the accident occurred due to the rash and negligent driving of the motor cycle by its rider and had also relied upon the fact that the FIR was registered against the rider of the two-wheeler. The Corporation also disputed the age and income particulars of the deceased.

4. The Tribunal which heard the Original Petition on the basis of the evidence on record concluded that the accident occurred due to the rash and negligent driving of the driver of the bus. In coming to the said conclusion, the Tribunal relied upon the FIR marked as Ex.P1 and evidence of PW2, the eye witness. The Tribunal also faulted the Corporation for not examining its driver to prove the absence of negligence on their part.

5. On quantum, the Tribunal assessed the loss of dependency at Rs.30,77,595/- based upon the salary certificate produced. While quantifying the same, the Tribunal added 50% towards future prospects and deducted 1/4th towards personal expenses. The Tribunal also awarded Rs.1,00,000/- towards loss of consortium, Rs.3,00,000/- towards loss of love and affection to the minor children, Rs.25,000/- towards loss of love and affection to the mother, apart from awarding a sum of Rs.25,000/- towards funeral expenses, Rs.10,000/- towards transportation, Rs.2,50,840/- towards medical expenses. Aggrieved the Corporation is on appeal.

6. We have heard Mr.D.Venkatachalam, learned counsel appearing for the appellant Corporation, Mr.D.Lakshmipathy, learned counsel appearing for the claimants/ respondents 1 to 4 and Mr.R.Shivakumar, learned counsel appearing for the 6th respondent Insurer of the two-wheeler. Notice to the 5th respondent who is the owner of the two-wheeler is dispensed with since she had remained exparte before the Tribunal.

7. Mr.D.Venkatachalam, learned counsel appearing for the appellant Corporation would restrict his arguments only to the quantum of conventional damages awarded by the Tribunal. According to him, the award of Rs.1,00,000/- towards loss of consortium and Rs.3,00,000/- towards loss of love and affection to the children is on the higher side, in view of the judgment of the larger bench of the Hon'ble Supreme Court in National Insurance Co. Ltd Vs. Pranay Sethi and others reported in 2018 (1) LW 331.

8. Mr.D.Lakshmipathy, learned counsel appearing for the respondents 1 to 4 is unable to counter the above contention of the learned counsel for the appellant in view of the categorical pronouncement of the larger bench of the Hon'ble Supreme Court in National Insurance Co. Ltd Vs. Pranay Sethi and others referred to supra.

9. The learned counsel for the appellant is unable to assail the quantum of compensation towards loss of dependency arrived at by the Tribunal, since the same is based on valid documentary evidence in the form of salary certificate. It is also seen that the Tribunal has adopted an appropriate percentage towards future prospects and has also adopted an appropriate multiplier. We therefore sustain the award on the ground of loss of dependency, loss of love and affection to the mother, funeral expenses, transportation charges and medical expenses.

10. The award towards loss of consortium is reduced to Rs.40,000/- from Rs.1,00,000/- and the award towards loss of love and affection is reduced to Rs.50,000/- from Rs.3,00,000/-. The Tribunal has not awarded any amount towards loss of estate. We therefore award a sum of Rs.10,000/- towards loss of estate. Thus worked out, the total award would be as follows:-

Award towards		Amount
Loss of Dependency	:	Rs.30,77,59 5/-
Loss of Consortium	:	Rs. 40,000/-

Award towards		Amount
Loss of Love and affection to the respondents 2 to 4 at Rs.25,000/- each	:	Rs. 75,000/-
Funeral Expenses	:	Rs. 25,000/-
Transportation	:	Rs. 10,000/-
Medical expenses	:	Rs. 2,50,840/-
Loss of Estate	:	Rs. 10,000/-
Total	:	Rs.34,88,43 5/-

The same is rounded off to Rs.34,88,500/-.

11. The award is apportioned as follow:-

1. The 4th claimant, mother would be entitled to Rs.4,88,500/- with proportionate interest.
2. The 1st claimant, wife of the deceased would be entitled to Rs.12,00,000/- with proportionate interest and entire costs.
3. The 2nd and 3rd claimants, the minor children would be entitled to Rs.9,00,000/- each with proportionate interest.

12. In fine, the appeal is partly allowed. The award of the Tribunal is modified and reduce to Rs.34,88,500/-. The award will carry interest at 7.5% per annum. The appellant Corporation is directed to deposit the award amount as per the modified award within a period of 8 weeks from the date of receipt of a copy of this judgment. On such deposit, the 1st and the 4th claimants (Mother and Wife) are permitted to withdraw their share of the compensation along with proportionate interest and costs. The Tribunal is directed to deposit the shares of the minor claimants in a interest bearing fixed deposit in any one of the Nationalized Banks till they attain majority. The 1st claimant, wife of the deceased, is permitted to withdraw interest once in three months for the maintenance of minors. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS IV)

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Sub Assistant Registrar

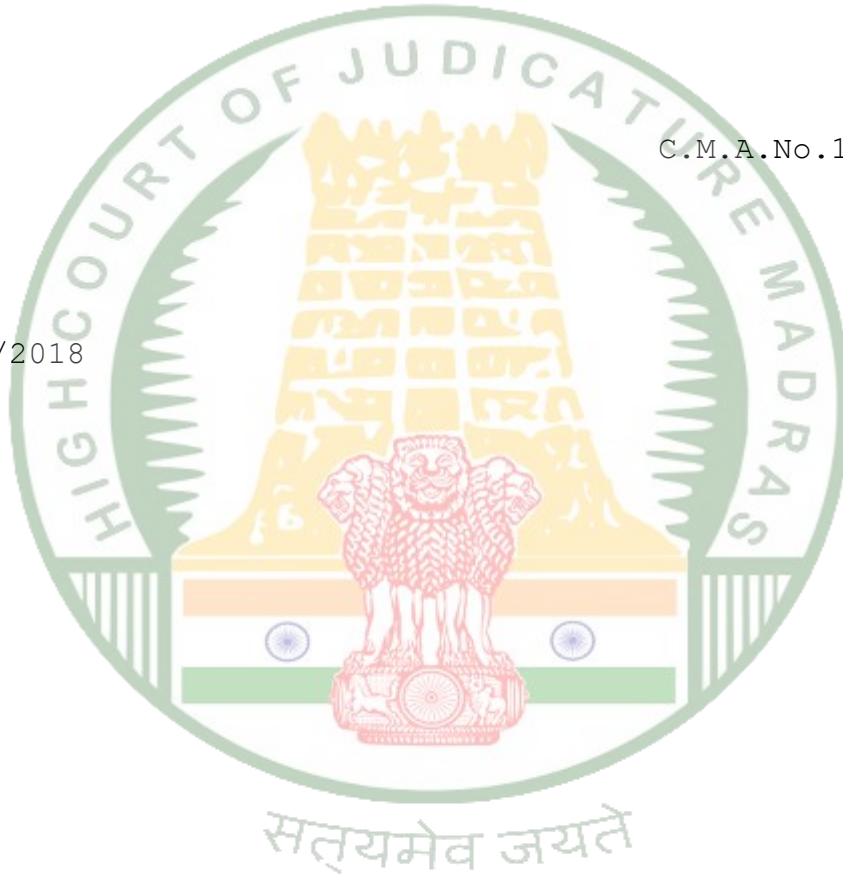
To

The Motor Accident Claims Tribunal,
Subordinate Judge, Mannargudi.

+lcc to Mr.D.Venkatachalam, Advocate Sr.66591
+lcc to Mr.D.Lakshmi Pathy, Advocate Sr.67340
+lcc to Mr.R.Sivakumar, Advocate Sr.66508

C.M.A.No.1813 of 2018

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