

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED : 22.10.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

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C.M.A. (MD) No.865 of 2018**and****C.M.P (MD) No.9504 of 2018**

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

... Appellant/Respondent No.1

Vs.

1.Karthikeyan
2.Valarmathi
3.Vimalraj
4.Vinayagam

...Respondents 1 to 4/

Petitioners 1 to 4

5.J.Manivannan

...Respondent No.5/

Respondent No.2

6.Regional Manager,
Oriental Insurance Company Ltd.,
Gopal Rao, Library Building,
First Floor, Town Hall Road,
Kumbakonam.

...Respondent No.6/

Respondent No.3

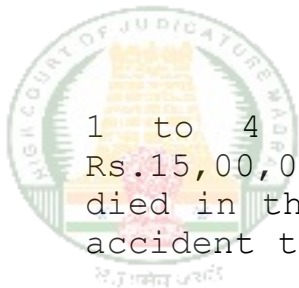
PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award made in M.C.O.P.No.102 of 2015, dated 07.09.2017, passed by the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Thanjavur at Kumbakonam.

For Appellant	: Mr.D.Sivaraman
For R1 to R4	: Mr.A.Thiruvadi Kumar
For R6	: Mr.K.Bhaskaran

JUDGMENT

Being aggrieved by the award passed by the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Thanjavur at Kumbakonam, in M.C.O.P.No.102 of 2015, dated 07.09.2017, the appellant Transport Corporation has filed the present appeal.

2.The appellant is the first respondent in M.C.O.P.No.102 of 2015, on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Thanjavur at Kumbakonam. The respondents



1 to 4 filed the said claim petition claiming a sum of Rs.15,00,000/- as compensation, for the death of one Dhayalan, who died in the accident, due to the injuries sustained by him in the accident that occurred on 02.08.2009.

3. According to the respondents 1 to 4, the deceased was travelling as a pillion in a motorcycle bearing Registration No.TN-49-R-7726 driven by one Raja @ Periyarselvam. At that time, the bus bearing Registration No.TN-49-N-1831 belonging to the appellant driven by its driver in a rash and negligent manner, dashed against the motorcycle. Due to the same, both the rider as well as the said Dhayalan sustained injuries. The said Dhayalan died on the spot due to the head injuries. The First Information Report was registered against the driver of the appellant. The respondents 1 to 4 are the legal heirs and dependants of the deceased. The deceased was 26 years at the time of accident and was working as an Electrical Mechanic and earning a sum of Rs.15,000/-. The accident had occurred only due to rash and negligent driving by the driver of the bus belonging to the appellant and hence, the respondents 1 to 4 filed a claim petition claiming a sum of Rs.15,00,000/- as compensation.

4. The appellant filed counter statement and contended that the accident did not take place due to rash and negligent driving by the driver of the bus belonging to the appellant. On the other hand, it is only a rider of the motorcycle without seeing the bus coming in the centre of the road and dashed against the bus and caused the accident and hence, the appellant is not liable to pay any compensation.

5. The fifth respondent remained ex-parte before the Tribunal.

6. The sixth respondent/Insurance Company filed counter and contended that the accident occurred only due to the rash and negligent driving by the driver of the bus belonging to the appellant and not due to the rider of the motorcycle and hence, the 6th respondent is not liable to pay any compensation.

7. The Tribunal considering the pleadings, both oral and documentary evidence and especially Ex.P1-FIR and Ex.P7-Sketch, held that the accident occurred only due to rash and negligent driving by the driver of the bus belonging to the appellant and directed the appellant to pay compensation to the respondents 1 to 4.

8. Aggrieved by the said award, the appellant has come out with the present Civil Miscellaneous Appeal.

<https://hcservices.ecourts.gov.in/hcservices/>

9. The learned counsel appearing for the appellant contended that though the appellant has raised grounds in the

appeal with regard to negligence, at the time of admission, he has stated that the present appeal is filed against the Common Award passed in M.C.O.P.Nos.101 & 102 of 2015 and the appellant has not filed any appeal against the M.C.O.P.No.101 of 2015 admitting the negligence on the part of the driver of the appellant and hence, in the present appeal is questioning only the quantum of compensation.

10.I have heard the learned counsel appearing for the appellant and the respondents 1 to 4 & 6 and perused the materials available on record.

11.The Tribunal has fixed the notional income of the deceased at Rs.7,500/- per month, considering the contention of the respondents 1 to 4 that the deceased was an electrical mechanic at the time of accident.

12.From the materials on record, it is seen that the Tribunal has not granted any amount towards future prospects. In view of the same, the notional income fixed by the Tribunal does not call for interference by this Court.

13.The contention of the learned counsel for the appellant that the Tribunal ought to have taken the age of the mother while applying the multiplier, is contrary to the judgment of the Hon'ble Apex Court reported in **2017(2) TNMAC 609 (SC) [National Insurance Co. Ltd., v. Pranay Sethi]**, wherein, it has been stated that the age of the deceased is the basis for applying the multiplier. The contention of the learned counsel for the appellant that the Tribunal has granted excessive amount towards loss of love and affection and funeral expenses, has considerable force.

14. In view of the settled position of law, this Court modifies the award of the Tribunal by reducing the compensation, as under:-

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	For loss of income	7,65,000	7,65,000	confirmed
2.	For funeral expenses	25,000	15,000	reduced
3.	For loss of estate	10,000	15,000	enhanced

4.	For Transportat ion	10,000	10,000	confirmed
6.	For loss of love and affection	1,50,000	40,000	reduced
	Total	Rs.9,60,00 0	Rs.8,45,0 00	By reducing a sum of Rs.1,15,000/ -

15. In the result,

(i) This Civil Miscellaneous Appeal is partly allowed, reducing the award of the Tribunal from Rs.9,60,000/- (Rupees Nine Lakhs Sixty Thousand only) to a sum of **Rs.8,45,000/-** (Rupees Eight Lakhs Forty Five Thousand only) along with interest at the rate of 7.5% per annum from the date of petition till date of realisation and proportionate costs;

(ii) The appellant Insurance Company is directed to deposit the award amount along with 7.5% interest and costs to the credit of M.C.O.P.No.102 of 2015, on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Thanjavur @ Kumbakonam, within a period of **eight weeks** from the date of receipt of copy of this judgment;

(iv) On such deposit being made, the claimants/respondents 1 to 4 are permitted to withdraw the award amount as per the ratio of apportionment made by the Tribunal by making necessary application before the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar (CS)

To

1.The Motor Accident Claims Tribunal,
Chief Judicial Magistrate Court,
Thanjavur at Kumbakonam.

COPY TO

The Record Keeper, (2 Copies)
V.R.Section,
Madurai Bench of Madras High Court,



+1 cc to Mr.D.Sivaraman , Advocate SR.No.'90997
+1 cc to Mr.K.Bhaskaran , Advocate SR.No.91198
+1 cc to Mr.A.Thiruvadi , Advocate SR.No.91005

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