

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

C.M.A.No.3341 of 2008 and

M.P.No.1 of 2008

C.M.A.No. 3342 of 2008 and

M.P.No.1 of 2008

Cros.Obj.No.75 of 2009 in C.M.A.No.3341of 2008 and

Cros.Obj.No.76 of 2009 in C.M.A.No.3342of 2008

The Managing Director

Tamil Nadu State Transport

Corporation, Villupuram

...Appellant/2nd respondent

(in both CMAs)

... Ist respondent

(in both Cross Objection)

Vs

1.Samadhanam

2.Parimala

3.Minor Chitra

4.Minor Jayakumar

...Respondents 1 to 4/claimants

(minors rep by

1 to 4

their Guardian and father

(in CMA.No.3341/2008)

Samadhanam)

and

Cross Objectors 1 to 4

(in Cross objection 75/2009)

1.Santha

... Ist respondent /Claimant

(in CMA.NO.3342/08)

...Cross objection

(in Cross Objection 76/09)

2.Gajendran

...5th respondent/Ist respondent

in CMA.No.3341/08

...2nd Respondent/Ist respondent

(in CMA.No.3342/2008)

...2nd respondent (in Cross

Objections 75 & 76/2009

The Branch Manager,

The Oriental Insurance Company Ltd

No.75, Krishnan Street,

Tiruvannamalai

...6th Respondent/3rd respondent

(in CMA.No.3341/08)

...3rd respondent/3rd respondent

(in CMA.No.3342/08)

...3rd Respondent (in Cross

Objections 75 & 76/2009)

Prayer in CMAs.No.3341 & 3342/2008:

Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988 preferred against the decree and Judgment dated 28/12/2006 and made in MCOP.Nos.484 & 907/05 on the file of the Motor Accident Claims Tribunal (District Judge 's Court), Tiruvannamalai.

Cross Objections 75 and 76/09:Cross objections filed under order 41 Rule 22 of CPC to set aside the Judgment and decree dated 28/12/2006 and made in MCOP.Nos.484 & 907/2005 on the file of the Motor Accident Claims Tribunal (District Judge's) Court, Tiruvannamalai.

For Appellant in
both C.M.A.Nos. : Mr.N.Anand

For Respondents in
C.M.A.No.3341 of 2008 : Mrs.M.Malar for R1 &R2
(R3 & R4 minors rep by R1)
Mr.N.Vijayaraghavan for R6
No appearance for R5

For Respondents in
C.M.A.No.3342 of 2008 : Mrs.M.Malar for R1
Mr.N.Vijayaraghavan for R3
No appearance for R2

COMMON JUDGMENT

C.M.A.Nos. 3341 of 2008 and 3342 of 2008 are filed by the Managing Director, Tamil Nadu State Transport Corporation, Villupuram against the orders passed by the District Judge, Motor Accidents Claims Tribunal, Tiruvannamalai in M.C.O.P.Nos. 484 and 907 of 2005, respectively. The claimants in M.C.O.P.No. 484 of 2005 filed the Cross Objection No. 75 of 2009 and the claimant in M.C.O.P.No.907 of 2005 filed the Cross Objection No. 76 of 2009. The claimants filed the above said M.C.O.P.Nos. 484 and 907 of 2005 under Section 166 of the Motor Vehicles Act, 1988 seeking compensation for the death of one pavunammal and for the injury sustained by one Santha respectively in a road accident that took place on 15.03.2005.

2. The brief case of the claimants in the above said MCOPs is as follows:

On 15.03.2005, the deceased pavunammal as well as the injured Santha were travelling in a lorry bearing Registration No. TMN 7036 belonging to one Gajendran on Villupuram - Perur road. At about, 12.45 pm, when the lorry was nearing Karaiyambatti village, a speeding bus bearing Registration No.

TN 32 N 2102 belonging to the Tamil Nadu State Transport Corporation, hit the lorry, as a result of which, the deceased pavunammal died on the spot and Santha sustained grievous injuries.

3. According to the claimants, the rash and negligent driving of the driver of the lorry bearing Registration No. TMN 7036 belonging to one Gajendran was the cause of the accident, and that since the said lorry was insured with the Oriental Insurance Company Limited, both of them are jointly and severally liable to pay compensation to them.

4. The owner of the lorry remained absent before the tribunal and therefore, he was set ex-parte. The Managing Director, Tamil Nadu State Transport Corporation, Villupuram and the Oriental Insurance Company Ltd., the insurer of the lorry bearing Registration No. TMN 7036 contested the claim petitions. The learned District Judge, Tiruvannamalai while awarding a sum of Rs.2,00,000/- to the claimants in MCOP.No.484 of 2005 and Rs.60,000/- for the claimants in MCOP.No.907 of 2005 together with interest at the rate of 7.5% per annum also held that since there is a head on collision between the bus bearing Registration No. TN 32 N 2102 and the lorry bearing Registration No. TMN 7036, there is a composite negligence on the part of both the drivers of bus and the lorry and therefore, the compensation should be apportioned in the ratio 50:50.

5. Aggrieved over the orders passed by the tribunal, the Managing Director, Tamil Nadu State Transport Corporation, Villupuram filed appeals in C.M.A.Nos.3341 and 3342 of 2008 under Section 173 of the Motor Vehicles Act, 1988.

6. Mr. N. Anand, learned counsel appearing for the appellant in both the above said CMAs would contend that when the FIR was registered against the driver of the lorry bearing Registration No. TMN 7036, the tribunal was wrong in apportioning the negligence in the ratio 50:50 on the drivers of the lorry and the bus.

7. A perusal of the records shows that this is a case of head on collision. Infact, the tribunal has observed that, merely, based on the rough sketch and plan, it cannot be concluded that which vehicle was responsible for the accident. Furthermore, in the instant case, the drivers of the bus and lorry died on the spot and the conductor of the bus bearing Registration No. TN 32 N 2102 was not examined on the side of the Tamil Nadu State Transport Corporation to show that only the driver of the lorry bearing Registration No. TMN 7036 was at fault. On the contrary, the evidence of PW1 and PW2 clearly show that both the drivers of the bus and lorry were at fault. In the facts and circumstances, fixing negligence in the ratio 50:50 on the part

of the bus bearing Registration No. TN 32 N 2102 and the lorry bearing Registration No. TMN 7036 by the tribunal cannot be held to be wrong.

8.As far as the quantum of compensation, the claimants in both the M.C.O.P.Nos.484 and 907 of 2005 filed Cross Objections No. 75 of 2009 and 76 of 2009 respectively. The claimants in M.C.O.P.No.484 of 2005 are the legal heirs of the deceased pavunammal. The tribunal has awarded a sum of Rs.2,00,000/- to the claimants together with interest at the rate of 7.5% per annum.

9.Mrs.Malar, the learned counsel appearing for the claimants in both the MCOPs would contend that the deceased pavunammal was aged just 39 years on the date of the accident and was earning a sum of Rs.6,000/- per month and the tribunal has awarded a very meagre amount of Rs.2,00,000/- as compensation. Therefore, the learned counsel would contend that the award passed by the tribunal has got to be enhanced.

10.The deceased was travelling in the lorry as a labourer on the date of the accident and since she was aged 39 years on the date of the accident, definitely, she would have earned a sum of Rs.4,500/- per month. As per the decision laid down in National Insurance Co. vs Pranay sethi and others reported in 2017 (2) TNMAC 601, 40% should be added towards future prospects of the deceased and since there are two dependents, 1/3 has to be deducted towards the personal expenses of the deceased. The proper multiplier to be adopted in the instant case is 15 as per the decision rendered in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121. Calculation:

Income = Rs.4,500/-

40% Future Prospects = Rs.1,800/-

Total = Rs.4,500/- + Rs.1,800 = Rs.6,300/-

Loss of dependency

= Rs.6,300 /- x 15 x 12 x 1/3 deduction

= Rs.11,34,000/- x 1/3 deduction

= Rs.7,56,000/-

Apart from the above amount, the claimants are entitled to a sum of Rs.15,000/-, Rs.40,000/- and Rs.15,000/- towards loss of estate, loss of love and affection and funeral expenses. The award passed by this Court under various heads is extracted hereunder:

S.No.	Head	Amount granted
1.	Loss of dependency	Rs.7,56,000/-
2.	Loss of estate	Rs.15,000/-
3.	Loss of love and affection	Rs.40,000/-
4.	Funeral expenses	Rs.15,000/-
Total		Rs.8,26,000/-

Thus the claimants in M.C.O.P.No.484 of 2005 are entitled to a sum of Rs.8,26,000/- together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

11.As far as the Cross Objection No. 76 of 2009 is concerned, Dr.Ravichandran (PW4) has assessed the partial permanent disability as 20%. The award passed by the tribunal is extracted hereunder:

S.No.	Head	Amount granted
1.	For the injuries sustained by the claimant	Rs.25,000/-
2.	Partial permanent disability	Rs.20,000/-
3.	Loss of income	Rs.9,000/-
4.	Pain and sufferings	Rs.5,000/-
5.	Medical expenses and Extra nourishment	Rs.1,000/-
Total		Rs.6,000/-

12.Infact, the tribunal has taken into consideration the various aspects before awarding a sum of Rs.60,000/- to the appellant/claimant and in the considered opinion of this Court, the amount awarded by the tribunal is a just compensation. Therefore, I do not see any reason to interfere with the award passed by the tribunal in M.C.O.P.No. 907 of 2005.

13.In the result,
C.M.A.No.3341 of 2008:

(i) The Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is dismissed.

(ii) The Cross Objection No. 75 of 2009 is partly allowed.

No costs.

(iii) The quantum of compensation awarded by the tribunal is enhanced from Rs.2,00,000/- to Rs.8,26,000/-.

(iv) The claimants are directed to pay the court fee for the enhanced compensation, if any, and the Registry is directed to draft the decree only after the payment of court fee.

(v) The Tamil Nadu State Transport Corporation and the Oriental Insurance Company limited are directed to deposit the enhanced compensation amount (less the amount already deposited by them) in the ratio 50:50 together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No. 484 of 2005, dated 28.12.2006, on the file of the Motor Accidents Claims Tribunal, (District Judge's Court), Tiruvannamali within a period of four weeks from the date of receipt of a copy of this order.

(vi) On such deposit being made, the claimants are at liberty to withdraw the same as apportioned by the tribunal after following due process of law.

C.M.A.No.3342 of 2008:

(i) The Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is dismissed.

(ii) The Cross Objection No. 76 of 2009 is dismissed. No costs.

(iii) The quantum of compensation awarded by the tribunal is upheld.

(iv) The Tamil Nadu State transport corporation and the Oriental Insurance Company limited are directed to deposit the enhanced compensation amount (less the amount already deposited by them) in the ratio 50:50 together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No. 907 of 2005, dated 28.12.2006, on the file of the Motor Accidents Claims Tribunal, (District Judge's Court), Tiruvannamali within a period of four weeks from the date of receipt of a copy of this order.

(v) On such deposit being made, the claimant is at liberty to withdraw the same after following due process of law.

Sd/-

Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

mbi

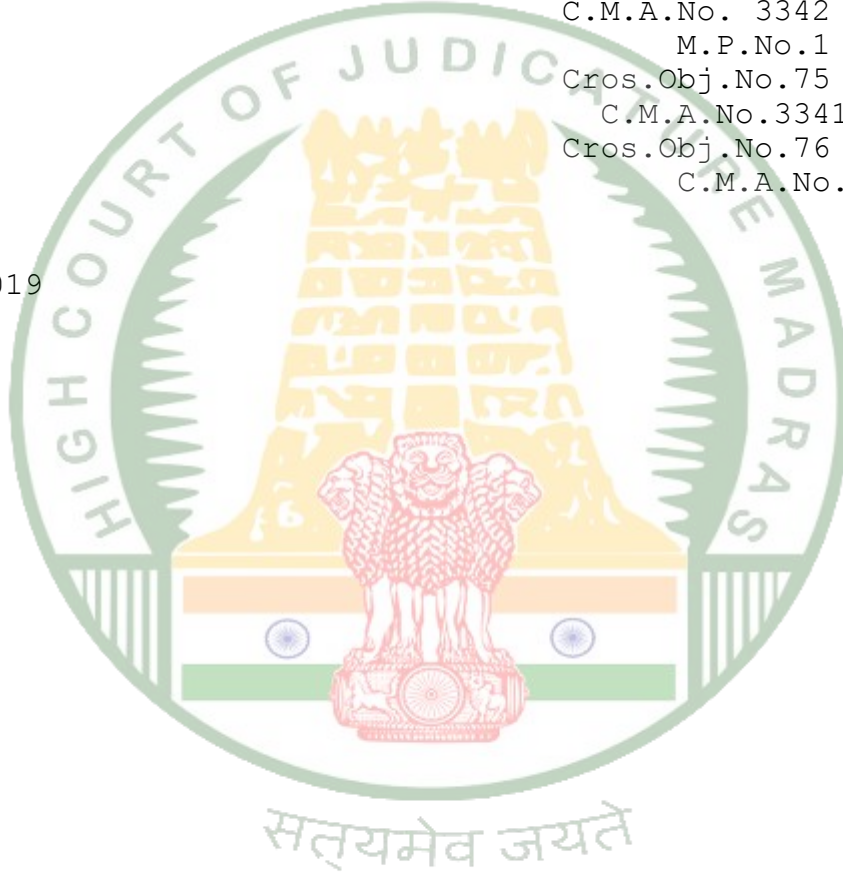
To

1.The Motor Accidents Claims Tribunal,
(District Judge's Court),
Tiruvannamalai.

+2 ccs to M/s.M.Vijayaraghavan Advocate sr6670 & 6669
+2 cc to M/s.M.Malar Advocate sr6168 & 6169
+2 cc to Mr.N.Anand Advocate sr5661 & 5662

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