

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.11.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

CMA.No.3272 of 2009

and

MP.No.1 of 2009

The Managing Director,
Tamil Nadu State Transport Corp. Ltd.,
Divisional Office,
12, Ramakrishna road, Salem - 7.

...Appellant/3rd Respondent

.Vs.

1.K.Mariammal

2.N.Kalaichelvi

3.N.Rajeswari

4.N.Sambath Kumar

...Petitioners/Respondents

5.D.Ramu

6.S.Kaliappan

... Respondents/Respondents

R5 & R6 given up

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 31.10.2008 passed in MCOP.No.67 of 2008 on the file of the Motor Accident Claims Tribunal / I Additional District Judge, Erode.

For Appellant : Mr.S.V.Vasanthakumar

For Respondents : Mr.S.Kaithamalai kumaran for R1 to R4

R5 & R6 : Given up

J U D G M E N T

The Tamil Nadu State Transport Corporation, the third respondent in MCOP.No.67 of 2008 on the file of the Motor Accidents Claims Tribunal / I Additional District Judge, Erode has filed the present appeal. The respondents 1 to 4 / claimants filed the above claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.15,00,000/- for the death of one Natesan, husband of the first claimant and father of the claimants 2 to 4 in a road accident on 09.10.2006.

2. The case of the claimants in nutshell is as follows:

On 09.10.2006, the deceased Natesan was travelling as a passenger in a bus bearing Registration No. TN 27 N 1345 belonging to the appellant on Edapadi - Sankari main road and at about 13.00 hours, when he attempted to alight the bus at Palwai bus stop, the driver of the bus started moving the bus rashly and negligently, as a result of which, the deceased Natesan fell down and died on the spot. According to the claimants, the rash and negligent driving of the driver of the bus belonging to the Tamil Nadu State Transport Corporation was the cause of the accident and therefore they are liable to pay compensation.

3. The driver and the conductor of the bus (fifth and sixth respondents) remained absent before the Tribunal, and therefore, they were set exparte. The learned Additional District Judge / Motor Accident Claims Tribunal, Erode after analysing the evidence on record, awarded a compensation of Rs.12,45,300/- together with interest at the rate of 7.5% per annum to the claimants and the Tribunal also concluded that the driver of the bus was rash and negligent in driving the bus. Aggrieved over the orders passed by the Tribunal, Tamil Nadu State Transport Corporation has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

4. Mr.S.V.Vasantha kumar, learned counsel appearing for the appellant contended that the deceased was travelling in the foot board of the bus with two bags in his hands and though sufficient evidence was adduced on the side of the appellant, in this regard, the Tribunal wrongly fixed the entire negligence on the part of the driver of the bus.

5. Per contra, Mr.S.Kaithamalai kumaran, learned counsel appearing for the respondents 1 to 4 / claimants contended that the Tribunal after analysing the oral and documentary evidence, adduced on both sides had fixed negligence on the part of the driver of the bus. His another contention is that the Tribunal has not awarded just and reasonable compensation to the claimants.

6. No appearance on behalf of the respondents 5 and 6.

7. The Tamil Nadu State Transport Corporation examined its driver as Ramu (RW1). Ramu (RW1) in his evidence had deposed that he saw the deceased travelling on the foot board of the bus with two bags in his hands. Even assuming that the evidence of RW1 is true, it is incomprehensible, as to why, the driver even after seeing a person standing on the foot board of the bus with

two bags in his hands, did not stop the bus and alert the passengers. The driver has failed in his duty and therefore, the negligence fixed on the part of the driver of the bus by the Tribunal cannot be found fault with.

8. As far as the quantum of compensation is concerned, it is pertinent to point out that the claimants had not filed any appeal or cross objection. A Hon'ble Division Bench of this Court in the decision in M/s.Bharti Axa General Insurance Co. Ltd. vs. Jayalakshmi and others in CMA.No.3629 of 2013 has held that,

"Even in the absence of appeal or cross objection by the respondents / claimants, this Court has got powers and jurisdiction under Order 41 Rule 33 and Section 151 of the Code of Civil Procedure and Article 227 of the Constitution of India to enhance the compensation, if it is found that just compensation was not awarded."

9. A perusal of the records shows that the deceased was an Accounts Supervisor, earning a sum of Rs.18,700/- per month and was aged 56 years on the date of the accident. The Tribunal did not award any amount towards future prospects of the deceased. As per the decision laid down in National Insurance Co. vs Pranay sethi and others reported in 2017 (2) TNMAC 601 (SC), 15% should be added towards future prospects of the deceased. As there are four dependents, 1/4th of the income of the deceased is deducted towards his personal expenses and the Tribunal had deducted only 1/3rd towards his personal expenses. The deceased was aged 56 years and the Tribunal had wrongly adopted multiplier '8'. It should be '9', as per the decision in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121. Thus the Tribunal has committed a gross error while awarding compensation to the claimants. The loss of dependency is calculated as stated below:

Calculation

Monthly Income = Rs.18,700/-

15% Future Prospects = Rs.2,805/-

Total = Rs.18,700/- + Rs.2,805/- = Rs.21,505/-

After 1/4 deduction = Rs.16,129/-

Loss of dependency

= Rs.16,129/- x 12 x 9

= Rs.17,41,932/-

10. Apart from the above said 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" respectively, as per the decision of the Supreme Court of India in National Insurance Co. vs Pranay sethi and others reported in 2017 (2) TNMAC 601 (SC). The award passed by this Court under various heads is extracted hereunder:

S.No.	Head	Amount granted by this Court
1.	Loss of dependency	Rs.17,41,932/-
2.	Loss of estate	Rs.15,000/-
3.	Loss of love and affection	Rs.40,000/-
4.	Funeral expenses	Rs.15,000/-
Total		Rs.18,11,932/-

Thus the compensation awarded by the Tribunal is enhanced from Rs.12,45,300/- to Rs.18,11,932/- which would carry interest at the rate of 7.5% per annum.

11. In the result,

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

(ii) The quantum of compensation awarded by the Tribunal is enhanced from Rs.12,45,300/- to Rs.18,11,932/-.

(iii) The respondents 1 to 4 / claimants are directed to pay the court fee for the enhanced compensation amount, if any, within a period of three weeks from the date of this order and the Registry is directed to draft the decree only after receipt of the Court fee.

(iv) The appellant / Tamil Nadu State Transport Corporation is directed to deposit the enhanced compensation i.e., Rs.18,11,932/- (less the amount already deposited) 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 MCOP.No.67 of 2008 on the file of the Motor Accidents Claims Tribunal / I Additional District Judge, Erode within a period of four weeks from the date of receipt of a copy of this order.

WEB COPY

(v) On such deposit being made, the respondents 1 to 4 / claimants are at liberty to withdraw the same as per the orders passed by the Tribunal after following due process of law. The apportionment made by the Tribunal shall be kept intact.

s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

mbi

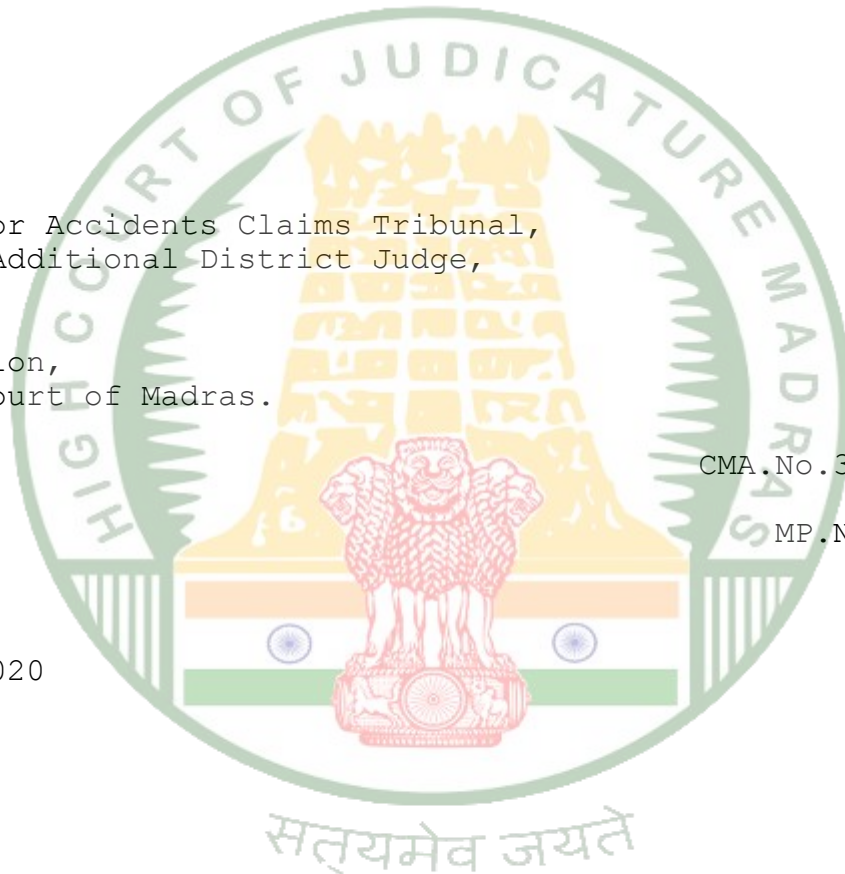
To

1.The Motor Accidents Claims Tribunal,
The I Additional District Judge,
Erode.

2.VR Section,
High Court of Madras.

CMA.No.3272 of 2009
and
MP.No.1 of 2009

bp(co)
aa23/07/2020



WEB COPY