

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.07.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.Nos.742 and 743 of 2009

and

M.P.Nos.1 and 1 of 2009

The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
No.37, Mettupalayam Road,
Coimbatore - 43.

.. Appellant in both CMAs/
2nd Respondent

Vs.

1. Jaya Rani
2. V.Thirumalaisamy
3. Gnanasundari
4. P.Perumalsamy

...Respondents 1 to 3/Claimants
..4th Respondent in CMA.No.742 of 2009/
1st Respondent

1. V.Muthusamy
2. V.Chinnasamy
3. Jayarani
4. V.Thirumalaisamy
5. Gnanasundari
6. P.Perumalsamy

...Respondents 1 to 5/Claimants
..4th Respondents in CMA.No.743 of 2009

Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 31.08.2007 in M.C.O.P.Nos.92 and 93 of 2004 on the file of the Motor Accidents Claims Tribunal, Sub Judge, Pollachi.

For Appellant : Mr.S.V.Vasanthakumar in both CMAs
R4 in CMA 742/09
R6 in CMA 743/09 : Given Up

R1 to R3 in CMA 742/09
R1 to R5 in CMA 743/09: No Appearance

COMMON JUDGMENT

The present appeals arise out of the common award dated 31.08.2007 passed by the Motor Accident Claims Tribunal, Sub Court, Pollachi, in MCOP.Nos.92 and 93 of 2004.

2.The facts of the case are as follows:

On the fateful day, i.e., on 16.05.1998, at about 3.45pm, the second respondent in CMA.No.742 of 2009, was driving the car bearing Registration No.TMC 3727 along with Mylathal and Velusamy and other family members in the Palani - Udumalai Salai at Krishnapuram. At that time, a bus belonging to the appellant Transport Corporation came in a rash and negligent manner from the opposite direction and dashed against the Car. As a result of the same, the said Mylathal and Velusamy succumbed to the injuries. Stating that the accident had occurred only due to the rash and negligent driving of the driver of the bus, the legal heirs of the deceased filed separate claim petitions claiming compensation. On consideration of the materials and evidence available on record, the Tribunal has held that both the drivers of the bus as well as the car were equally responsible for the accident and accordingly fastened the liability on the appellant Transport Corporation at 50% and ultimately, awarded a total compensation of Rs.2,32,000/- to the claimants in MCOP.No.92/2004 and Rs.2,76,000/- to the claimants in MCOP.No.93/2004 with interest at the rate of 7.5% per annum from the date of respective claim petitions. Challenging the same, the appellant Transport Corporation has preferred the present appeals.

3.The learned counsel for the appellant/Transport Corporation has not disputed the manner of the accident and the conclusion arrived at by the Tribunal that the drivers of the bus and Car were equally responsible for the accident. However, he submitted that the quantum of compensation awarded by the Tribunal is excessive and exorbitant and hence, the same needs reduction.

4.Heard the learned counsel for the appellant and perused the materials available on record carefully and meticulously.

5.It is seen that the respondents are not ready in notice. Even though these appeals were admitted way back in the year 2009, the appellant/Transport Corporation has not taken proper steps to serve notice to the other side, even at this length of time. However, due to efflux of time, this Court is inclined to decide these appeals on merits.

6. There is no dispute with regard to the findings of the Tribunal on negligence and liability on the appellant Transport Corporation to the extent of 50%, in paying the compensation to the claimants.

7. As regards the quantum of compensation, the Tribunal has awarded Rs.2,32,000/- as total compensation to the claimants in MCOP.No.92/2004. P.W.1, son of the deceased, deposed that his mother Mylathal was aged about 52 years and was earning a sum of Rs.3500/- per month by doing Coolie work and milk business. But there is no evidence to substantiate the same. Hence, the Tribunal has taken the monthly income of the deceased at Rs.2,500/-, after deducting 1/3rd towards personal expenses, arrived at the annual income at Rs.20,004/- and adopted the multiplier of 11 and awarded the compensation towards pecuniary loss at Rs.2,20,044/- @ Rs.2,20,000/-. The Tribunal has correctly analyzed the income of the deceased, adopted the correct multiplier and arrived at the said sum towards the contribution of the deceased to her family and hence, the same need not be interfered with by this Court. That apart, the Tribunal has awarded Rs.5,000/- towards funeral expenses, Rs.1,000/- towards the damage to dress and articles, Rs.1,000/- towards transport expenses for conducting postmortem, Rs.5,000/- towards love and affection and consortium, which appear to be fair, just and reasonable having regard to the facts and circumstances of the case and hence, the same are hereby confirmed.

8. In respect of the compensation awarded to the claimants in MCOP.No.93/2004, P.W.1, son of the deceased, deposed that his father was aged about 50 years and was earning a sum of Rs.3500/- per month by doing coolie work and milk business. However, there is no evidence to prove the same. Hence, the Tribunal has taken the monthly income of the deceased at Rs.3000/- and after deducting 1/3rd towards personal expenses, arrived at the annual income at Rs.24,000/- and adopted the multiplier of 11 and determined the compensation towards pecuniary loss at Rs.2,64,000/-. The Tribunal has correctly analyzed the income of the deceased, adopted the correct multiplier and arrived at the said sum towards the contribution of the deceased to his family and hence, the same need not be interfered with by this Court. That apart, the Tribunal has awarded Rs.5,000/- towards funeral expenses, Rs.1,000/- towards the damage to dress and articles, Rs.1,000/- towards transport expenses for conducting postmortem, Rs.5,000/- towards love and affection and consortium, which appear to be fair, just and reasonable and hence, the same are hereby confirmed.

9.In the result, both the appeals are dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

10.Since the respondents/claimants have not impleaded the insurer of the Car, in which, the deceased had travelled at the time of accident, they are entitled to receive only 50% of the compensation awarded by the Tribunal. Accordingly, the appellant Transport Corporation is directed to deposit 50% of the compensation amounts awarded by the Tribunal along with interest and costs, less the amount already deposited if any, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the respondents/claimants are permitted to withdraw their respective shares as apportioned by the Tribunal, on making proper application.

Sd/-

Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

av

To

1.The Subordinate Judge,
Motor Accidents Claims Tribunal,
Pollachi.

C.M.A.Nos.742 & 743 of 2009
and
M.P.Nos.1 and 1 of 2009

TM(CO)
CB(11/06/2020)

सत्यमेव जयते

WEB COPY