

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.03.2019

CORAM:

THE HONOURABLE Mr.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.3332 of 2011

and

M.P.No.1 of 2011

and

Cross.Objection No.8 of 2013

The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Coimbatore Division I,
37, Mettupalayam Road,
Coimbatore

.. Appellant /2nd Respondent
(in CMA NO.3332/2011)/
Sole respondent (in
Cross.Objection NO.8/2013)
Vs.

1.Natarajan ..respondents1 to 4/ Petitioners
2.N.Kanumachi (in CMA NO.3332/2011)/
Cross objectors 1 to 4
(in Cross.Objection NO.8/2013)
3.N.Vijayalakshmi
4.Minor.N.Thirunavukkarasu
Minor Rep.by guardian mother Kanumachi
5.Devarajan
(R5 given up) ..5th Respondent/1st respondent
(in CMA NO.3332/2011)

Prayer in C.M.A.No.3332 of 2011 and Cross Objection No.8 of 2013: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 and Cross Objection filed under Order 41, Rule 22 of C.P.C., against the fair and decreetal order dated 09.06.2010 passed in M.C.O.P.No.57 of 2009 by the learned Additional District Judge, Motor Accident Claims Tribunal, Fast Track Court II, Gobichettipalayam.

C.M.A.No.3332 of 2011

For Appellant : Mr.S.S.Swaminathan
For R1 to R4 : Mr.M.Selvam
For R5 :Given Up

Cross Objection No.8 of 2013

For Cross objectors : Mr.M.Selvam

For Respondent :
Mr.S.S.Swaminathan

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the Tamil Nadu State Transport Corporation and Cross Objection 8 of 2013 filed by the respondents in the said CMA seeking for enhancement of compensation.

2. The averments made in the claim petition is as follows:

(i) On 08.01.2003 at about 08.30 p.m., one Ramesh was travelling in a cycle near Gandhi Nagar bus stop Avinashi road Tirupur. At that time, the Government bus bearing Registration No.TN 38 N 0128 came in a rash and negligent manner, dashed against a cyclist and then dashed against the said Ramesh. He was thrown away and he died on the spot due to the multiple injuries sustained by him in the accident.

(ii) The accident was due to the rash and negligent driving of the driver of the bus in the course of the employment under the second respondent. So, both the respondents are jointly and severally liable to compensate the respondents. The deceased was hale and healthy man of 24 year old. He was a diploma holder in Teacher Education. He was a Government school teacher in Panchayat Union Middle School, Siruppooluvapatti, Tiruppur and he was getting a salary of Rs.7,500/- p.m. He was also taking tuition for students of all classes and he earned a sum of Rs.7,500/- from that per month. Thus, this total income per month was Rs.15,000/-. Out of that income, the deceased used to spent Rs.12,000/- per month for the respondents. The respondents 1 and 2 are sick persons and they have no work and income. The respondents 3 and 4 who are the sister and brother of the deceased and the parents of deceased and sister and brother was solely dependent on the income of the deceased alone. The deceased was an unmarried man.

3. The appellant/State Transport Corporation has denied the negligence on the part of the driver in their counter statement.

4. Before the Tribunal, on behalf of the claimants, PW1 to PW3 were examined as witness and Ex.A1 to Ex.A9 were marked. On behalf of the respondents one witness, namely, Jagadeesan-Transport Corporation conductor of the bus was examined and no exhibit was marked.

5. Based upon the oral and documentary evidence and the occurrence witness of P.W.2 and P.W.3 and Exhibits A1 and A2, the Tribunal has held that the accident has taken place due to the rash and negligent driving of the driver-Transport Corporation Bus in the absence of any positive evidence being laid in by the Government Bus.

6. It remains to be stated that driver of the bus was not examined to elicit the manner of the accident and in view of the oral evidence of P.W.2 and Exhibits A1 and A2, the Tribunal has rightly come to the conclusion that the accident has taken place due to the rash and negligent driving of the driver of the Government Bus does not warrant any interference and the same is hereby confirmed.

7. On the point of quantum of compensation, both the parties are heard.

8. The learned counsel for the respondents would submit that the deceased was a Bachelor working as a Teacher in Government Elementary School and was earned Rs.15,000/- as per Ex.A3 Salary Certificate Exhibit A8 Service Book and Exhibit A9 Salary details, the Tribunal has assigned his own reason and fixed the notional income of the deceased as Rs.9,000/-. However, taking note of the fact that Exhibit A8 and Exhibit A7, this Court is of the considered view that he could have earned Rs.7,000/- after deduction and the future prospectus 50% has to be added as per the decision of the Constitution Bench of the Honourable Supreme Court of India in National Insurance Company Limited Vs. Pranay Sethi and others reported in 2017 (2) TN MAC 601, the age of the parents should not be the criteria and only the age of the victim should be taken following the decision of the Hon'ble Supreme Court reported in 2009 (2) TN MAC 1 SC [Sarala Verma and Others Vs. Delhi Transport Corporation and another] and accordingly, his monthly contribution to the family, the salary is arrived at (Rs.10500*12) taking the age of the deceased who died and accordingly, the loss of dependency is re-assessed at Rs.11,34,000/- (Rs.7,000/-+Rs.3,500/-=Rs.10,500/-*12*18*1/2). For 'funeral expenses' Rs.15,000/-, for 'loss of estate' Rs.15,000/- and for 'loss of love and affection' Rs.50,000/- awarded by the Tribunal are confirmed. Since, there is no award under the head 'transport expenses', this Court awards a sum of

Rs.10,000/- towards the same.

9. Therefore, the compensation awarded by the Tribunal is enhanced from Rs.9,91,000/- to Rs.12,24,000/-, which shall carry interest at the rate of 7.5% per annum.

10. In the result,

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

(ii) Cross Objection No. 8 of 2013 is partly allowed.

(iii) The quantum of compensation awarded by the Tribunal is enhanced.

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

(iv) The appellant - Insurance Company is directed to deposit the enhanced compensation awarded by this Court, i.e., Rs.12,24,000/- (if not 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 M.C.O.P.No. 57 of 2009, dated 09.06.2010, on the file of the Additional District Judge, Motor Accident Claims Tribunal, Fast Track Court II, Gobichettipalayam within a period of twelve weeks from the date of receipt of a copy of this order.

(v) On such deposit being made by the present appellant, the claimants 1, 2 and 3 are permitted to withdraw the same, as per the orders passed by the Tribunal, in the manner known to law. The apportionment granted by the Tribunal shall be kept intact.

(vi) The fourth claimant is minor, and therefore, his share of compensation amount is ordered to be deposited in any one of the nationalized bank, until he attains majority, and the second claimant is permitted to withdraw the interest directly from the bank, once in three months in order to maintain the minor.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1.The Motor Accident Claims Tribunal,
Fast Track Court II, Gobichettipalayam.

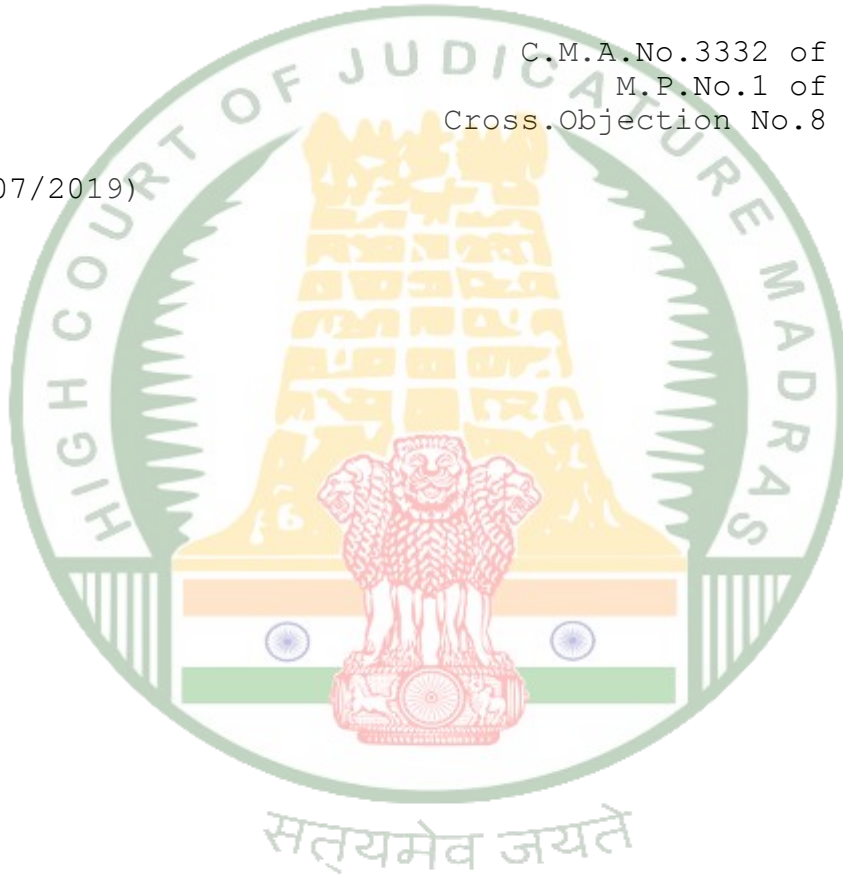
2. The Section Officer,
V.R. Section, High Court, Madras - 104.

+lcc to Mr.M.Selvam , Advocate SR.No. 25212

+lcc to Mr.S.S.Swaminathan , Advocate SR.No. 25811

C.M.A.No.3332 of 2011and
M.P.No.1 of 2011and
Cross.Objection No.8 of 2013

A.SK(12/07/2019)



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