

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

CMA.No.1633 of 2016 & C.M.P.No.12425 of 2016
and Cross Objection No.59 of 2017

CMA.No.1633 of 2016

The General Manager,
Tamil Nadu State Transport Corporation
Limited,
Rangapuram, Vellore-9. .. Appellant/Respondent

Vs.

1.Amulu
2.Vijaya ... Respondent/Petitioner

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 07.04.2015 made in M.C.O.P.No.862 of 2014 on the file of the Motor Accident Claims Tribunal, I Additional District and Sessions Court, Vellore.

For Appellant : Mr.K.J.Sivakumar

For RR1 and R2 : Mr.M.Sivakumar for
Mr.C.Prabakaran

Cross Objection No.59 of 2017

1.Amulu
2.Vijaya .. Cross objectors/Respondent

Vs.

The General Manager,
Tamil Nadu state Transport Corporation
Limited,
Rangapuram, Vellore-9. .. Respondent/Appellant

Prayer: This Cross Objection is filed under Order XLI Rule 22 of C.P.C against the judgment and decree dated 07.04.2015 made in M.C.O.P.No.862 of 2014 on the file of the Motor Accident Claims Tribunal, I Additional District and Sessions Court, Vellore.

For Cross Objector : Mr.C.Prabakaran

For R1 : Mr.K.J.Sivakumar

C O M M O N J U D G M E N T

The Civil Miscellaneous Appeal has been filed by the Transport Corporation against the award dated 07.04.2015 made in M.C.O.P.No.862 of 2014 on the file of the Motor Accident Claims Tribunal, I Additional District and Sessions Court, Vellore.

The Cross-Objection has been filed by the claimants seeking enhancement of compensation granted by the Tribunal in the award dated 07.04.2015 made in M.C.O.P.No.862 of 2014 on the file of the Motor Accident Claims Tribunal, I Additional District and Sessions Court, Vellore.

2.Both the appeal and cross-objections arise out of the same accident and same award and hence, they are disposed of by this common judgment.

3.Parties in these appeals are referred to by their respective ranks in the claim petition for the sake of convenience.

4.The Transport Corporation is respondent in M.C.O.P.No.862 of 2014 on the file of the Motor Accident Claims Tribunal, I Additional District and Sessions Court, Vellore. The claimants-cross objectors filed the above claim petition claiming a sum of Rs.25,00,000/- as compensation for the death of one Vimalraj, who died in the accident that took place on 06.01.2013.

5.The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred only due to rash and negligent driving by the driver of the bus belonging to the respondent-Transport Corporation and directed the respondent-Transport Corporation to pay a sum of Rs.9,56,000/- as compensation to the claimants.

6.Against the said award dated 07.04.2015 made in M.C.O.P.No.862 of 2014, the respondent-Transport Corporation has

come out with C.M.A.No.1633 of 2016 challenging the liability fastened on them as well as quantum of compensation awarded by the Tribunal. Not being satisfied with the amount awarded by the Tribunal, the claimants have come out with Cros.Obj.No.59 of 2017 seeking enhancement of compensation awarded by the Tribunal.

7.The learned counsel appearing for the respondent-Transport Corporation contended that the Tribunal has failed to note that the deceased did not possess any valid registration certificate and the accident has occurred only due to negligence on the part of the deceased by not following the traffic rules. The Tribunal has erred in fixing notional income of the deceased at Rs.6,500/- per month without any document and the same is on the higher side. The Tribunal has awarded higher compensation under the head of loss of love and affection. The amounts awarded by the Tribunal under different heads are excessive and prayed for setting aside the award of the Tribunal.

8.Per contra, the learned counsel appearing for the claimants contended that the Tribunal has failed to note that the deceased was working as carpenter, he was earning a sum of Rs.8,500/- per month and the same was proved by examining P.W.3 and marking Ex.P8-salary certificate. The Tribunal ought to have fixed 50% towards future prospects of the deceased. The Tribunal has not awarded any amount towards loss of consortium for the young widow-1st claimant. The amounts awarded by the Tribunal under the heads of funeral expenses and loss of love and affection are meagre and prayed for enhancement of compensation.

9.Heard the learned counsel appearing for the respondent-Transport Corporation as well as the learned counsel appearing for the claimants and perused the materials available on record.

10.From the materials available on record, it is seen that P.W.2-eye witness, who is pillion rider in the motorcycle driven by the deceased, in his evidence has deposed that while the deceased was riding his two wheeler, the bus belonging to the respondent-Transport Corporation driven by its driver in a rash and negligent manner, dashed against the motorcycle, the deceased fell down on the road, front wheel of the bus ran over the head of the deceased and he died on the spot. Ex.P1-F.I.R. is registered against the driver of the respondent bus. Ex.P3-final report filed by the claimants shows that the charge sheet has been registered against the driver of the bus. Though the driver of the bus, who was examined as R.W.1, in his evidence has deposed that the accident occurred due to negligent act of the deceased, in his cross examination, he has admitted that the F.I.R. and charge sheet have been registered against him. Though the respondent-Transport corporation contended that the

deceased did not possess any valid registration certificate, they have not let in any evidence to prove the same. The Tribunal considering the oral and documentary evidence let in by the claimants, has come to the conclusion that the accident occurred only due to rash and negligent driving by the driver of the bus belonging to the respondent-Transport Corporation. There is no error in the said finding of the Tribunal warranting interference by this Court.

11.As far as quantum of compensation is concerned, the claimants have examined one Karthikeyan as P.W.3, who is working as H.R.Manager in the company where the deceased worked. In his evidence, he deposed that the deceased was working as a carpenter and was earning a sum of Rs.8,500/- per month. Exs.P7 to P9 were marked to prove the income of the deceased. The Tribunal has fixed the notional income of the deceased at Rs.6,500/- per month, which is meagre. Considering that the accident is of the year 2013 and the deceased was aged 24 years at the time of accident, this Court fixes the notional income of the deceased at Rs.7,500/- per month. As per the judgment of the Hon'ble Apex Court reported in 2017 (2) TNMAC 609 (SC) (National Insurance Company v. Pranay Sethi & others), the claimants are entitled to 40% towards future prospects. Thus the loss of income is modified as follows:

$$\text{Rs.7,500/-} + 3000 - (\text{Rs.7,500/-} \times 40\%) \times 12 \times 18 \times \frac{2}{3} = \text{Rs.15,12,000/-}$$

The Tribunal has awarded a sum of Rs.5,000/- towards medical expenses without any document and hence the same is hereby set aside. The Tribunal has not awarded any amount towards loss of consortium. Considering that the 1st claimant was aged 20 years and she lost her husband at her young age, a sum of Rs.40,000/- is granted towards loss of consortium. The Tribunal has not awarded any amount towards loss of estate and this Court awards a sum of Rs.15,000/- under this head. A sum of Rs.5,000/- awarded by the Tribunal towards funeral expenses is meagre and hence this Court enhances the said sum to Rs.15,000/-. The amount awarded by the Tribunal under the head of loss of love and affection is just and reasonable and the same is hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of Income	9,36,000	15,12,000	Enhanced
2.	Medical Expenses	5,000	-	Set aside

3.	Funeral Expenses	5,000	15,000	Enhanced
4.	Loss of Love and Affection	10,000	10,000	Confirmed
5.	Loss of Consortium	-	40,000	Granted
6.	Loss of Estate	-	15,000	Granted
	Total	9,56,000	15,92,000	Enhanced Rs.6,36,000/-

12.The compensation awarded by the Tribunal at Rs.9,56,000/- is hereby enhanced to Rs.15,92,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. The claimants shall pay the necessary Court fee if any, on the enhanced compensation. The 1st claimant being the wife of the deceased is entitled to a sum of Rs.9,00,000/- and the 2nd claimant being the mother of the deceased is entitled to a sum of Rs.6,92,000/- as compensation. The respondent-Transport Corporation is directed to deposit the enhanced award amount now determined by this Court along with interest and costs, less the amount already deposited if any, within a period of twelve weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants are permitted to withdraw their respective share in the enhanced award amount along with proportionate interest and costs, less the amount if any, already withdrawn. No costs.

13.In the result, the Civil Miscellaneous Appeal is dismissed and the Cross Objection is partly allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

//True copy//

Sub Assistant Registrar

kj/rst

To

1.The I Additional District and Sessions Judge,
The Motor Accident Claims Tribunal,
Vellore.

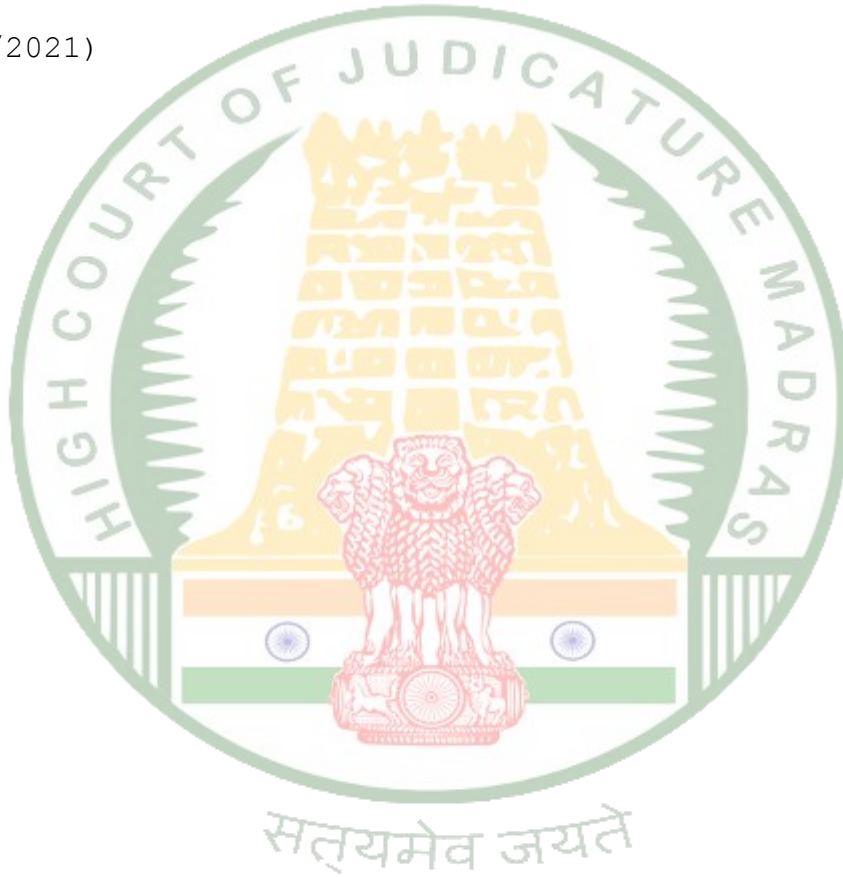
2.The Section Officer
V.R.Section, High Court
Chennai.

+1cc to Mr.K.J.Sivakumar, Advocate SR.No.8095

+1cc to Mr.C.Prabakaran, Advocate SR.No.8117

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PP (CO)
GMY (11/05/2021)



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